



# AIA® Document A104® – 2017

## Standard Abbreviated Form of Agreement Between Owner and Contractor

**AGREEMENT** made as of the 10<sup>th</sup> day of April in the year 2024  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, legal status, address and other information)

**TARRANT COUNTY HOSPITAL DISTRICT D/B/A JPS HEALTH NETWORK**  
1500 South Main Street  
Fort Worth, Texas 76104

and the Contractor:  
(Name, legal status, address and other information)

**HUTCHERSON CONSTRUCTION, INC.**  
1020 Harrison Ave., Arlington, Texas 76011  
Fort Worth, TX 76104

for the following Project:  
(Name, location and detailed description)

**CHEMISTRY ANALYZER REPLACEMENT**  
1500 South Main Street  
Fort Worth, TX 76104

The Architect:  
(Name, legal status, address and other information)

**OWT ARCHITECTS, PLLC**  
5049 Edwards Ranch Road, #04-138, Fort Worth, Texas 76109  
Attn: Richard Williams, Principal  
Telephone: 817-993-9844  
Email: rwilliams@owtarchitects.com

The Owner and Contractor agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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### ARTICLE 1 THE WORK OF THIS CONTRACT

§ 1.1 The Contractor shall execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. The scope of Work is generally defined as construction services for the Chemistry Analyzer Replacement Project located in Fort Worth, Texas.

§ 1.2 The Contractor shall prosecute the Work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards for projects similar to the Project, following all manufacturer's instructions and requirements, using qualified, careful, and efficient workers, in conformity with the provisions of this Agreement and the other Contract Documents, and in strict compliance with Applicable Laws, as defined below. The Contractor shall inform itself fully and completely comply with Applicable Laws and shall require all of its Subcontractors to comply with all Applicable Laws.

**§ 1.3** The Contractor shall furnish only skilled and properly trained personnel for the performance of the Work. During the performance of the Work, the Contractor shall keep a competent superintendent at the Site, fully authorized to act on behalf of the Contractor. Notice from the Owner to such superintendent in connection with defective Work or instructions for performance of the Work shall be considered notice of such issues to the Contractor.

#### **§ 1.4 Definitions**

**§ 1.4.1 Applicable Law(s).** As used herein, the term "Applicable Law" or "Applicable Laws" shall mean any and all laws, statutes, rules, regulations, ordinances, codes, permits, or orders of any federal, state, or local Authorities Having Jurisdiction over the Project (including but not limited to the City of Fort Worth), all as in effect as of the date of the Agreement and as amended during the term of the Contract including those governing labor, equal employment opportunity, safety, and environmental protection, and further including, without limitation, (i) all applicable zoning ordinances, building codes, and fire and life safety codes; (ii) all accessibility laws and codes including but not limited to the Texas Accessibility Standards of the Architectural Barriers Act (TAS), Chapter 469 of the Texas Government Code, Elimination of Architectural Barriers, the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101), the 2010 ADA Standards for Accessible Design, and current ADAAG Standards; (iii) all standards relating to construction, inspection, and safety of hospitals set forth in Tex. Admin. Code §133 particularly including, but not limited to Subchapter F, H and I and Tex. Admin. Code § 135, particularly including, but not limited to Subchapters B and C, excluding the development, implementation, or enforcement of any operational policy or plan, periodic inspection requirements following the issuance of the Certificate of Occupancy (if any), and any "reporting" required of Owner by Tex. Admin. Code §135; (iv) occupational safety acts and requirements applicable to the Project, including United States Occupational Safety and Health Administration requirements and related federal and state regulations; (v) requirements of the Fair Labor Standards Act and applicable state wage and hour laws including Tex. Gov't. Code § 2258.001 et seq.; (vi) any laws respecting the assumption of liability for taxes, contributions and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities or other similar benefits for Contractor's and its Subcontractors' employees; (vii) applicable laws relating to civil/human rights, including but not limited to (a) requirements under Titles VI and VII of the Civil Rights Act of 1964, as amended, (b) the Equal Pay Act of 1963, (c) the Rehabilitation Act of 1973, and (d) the Age Discrimination in Employment Act requirements; (viii) green building policies and regulations and sustainable building codes, including those implemented by the City of Fort Worth; (ix) all Environmental Laws, applicable storm water, street, utility and other related infrastructure requirements, requirements related to the use, removal, storage, transportation, disposal and remediation of Hazardous Materials and lead based paint, and all related health laws and regulations; (x) the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); and (xi) The Facilities Guidelines Institute Guidelines for Design and Construction of Outpatient Facilities (2018 edition) and Guidelines for Design and Construction of Hospitals (2018 edition); (xii) Centers for Medicare and Medicaid Services (CMS.gov) State Operations Manual for Ambulatory Surgical Centers and State Operations Manual for Hospitals; and (xiii) any other applicable local, state, and federal laws respecting the Project, including, but not limited to, those listed in **Exhibit G** and **Exhibit H** hereto.

**§ 1.4.2 Architect.** The "Architect" is the professional architect or engineer employed by the Owner to perform all or part of the design services and if required by agreement between the Owner and Architect construction administration services, as detailed in that certain agreement between Owner and Architect and discussed herein in Article 10.

**§ 1.4.3 Authority/ies Having Jurisdiction.** "Authority Having Jurisdiction" or "Authorities Having Jurisdiction" means a federal, state, local, or other regional department, or an individual such as a fire marshal, building official, electrical inspector, utility provider or other individual having statutory authority.

**§ 1.4.4 Contingency.** The "Contingency" is a separately identified amount agreed to by Owner and Contractor included in the Cost of the Work as set forth in **Exhibit E** to be used only in the limited circumstances described in Section 3.4.3.9 and only with prior written approval of the Owner.

**§ 1.4.5 The Contract.** The Contract Documents form the "Contract" for Construction. The Contract includes this Agreement and all other Contract Documents and represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. A Modification is a (1) written amendment to the Contract signed by both parties, (2) a Change Order, or (3) an Owner Change Directive. The Contract Documents shall not be construed to create a contractual relationship of any kind (a) between the Contractor and the Architect (or other design professional retained by Owner for the Project) or the consultants of Architect (or other design professional retained by the Owner for the Project), (b) between the Owner and a Subcontractor, (c) between the Owner and the Architect (or other design

professional retained by Owner for the Project) or the consultants of Architect (or other design professional retained by the Owner for the Project), or (d) between any persons or entities other than the Owner and the Contractor. The Owner shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Owner's duties. Conflicts or inconsistencies in the Contract Documents shall be resolved as set forth in Article 1 of the Agreement.

**§ 1.4.6 Contract Documents.** "Contract Documents" shall have the meaning assigned to it in Article 7.

**§ 1.4.7 Contract Sum.** The "Contract Sum" is the amount to be paid to the Contractor for performance of the Work, as identified in Article 3 herein.

**§ 1.4.8 Contract Time.** Unless otherwise provided, the "Contract Time" is the period of time, including authorized adjustments, as set forth in Section 2.3 herein for Substantial Completion of the Work.

**§ 1.4.9 Day.** "Day" means calendar day, unless otherwise stated herein.

**§ 1.4.10 The Drawings.** The "Drawings" are the plans, drawings, profiles, cross-sections, and supplemental drawings, or reproductions thereof, prepared by the Architect and approved by Owner, which show the locations, character, dimensions, elevations, sections, and details of the Work for the Project.

**§ 1.4.11 Environmental Laws.** As used in the Agreement and herein, "Environmental Law" or "Environmental Laws" shall mean any and all federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Project or Owner's property, including without limitation the following, as now or hereafter amended: (i) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C.A. § 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613; (ii) the Resource, Conservation and Recovery Act, 42 U.S.C.A. § 6901 *et seq.* as amended by the Used Oil Recycling Act of 1980 (Pub. L. No. 96-463, 94 Stat. 2055 (1980)), the Solid Waste Disposal Act Amendments of 1980 (Pub. L. No. 96-482, 94 Stat. 2334 (1980)), and the Hazardous and Solid Waste Amendments of 1984 (Pub. L. No. 98-616, 98 Stat. 3221 (1984)), and regulations promulgated thereunder; (iii) the Toxic Substances Control Act, 15 U.S.C.A. § 2601 *et seq.*; (iv) Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C.A. § 11001 *et seq.*; (v) the Clean Water Act, 33 U.S.C.A. § 1251 *et seq.* and National Pollutant Discharge Elimination System (NPDES) regulations; (vi) the Clean Air Act, 42 U.S.C.A. § 7401 *et seq.*; (vii) 2008 Lead Based Paint Renovation, Repair and Painting Program Rule, 40 CFR Part 7445, Subpart E; and (viii) any corresponding state laws or ordinances including, without limitation, the (a) Texas Water Quality Control Act; (b) the Texas Water Code Chapter 26; (c) Texas Solid Waste Disposal Act; (d) Texas Health & Safety Code Chapter 361; (e) Texas Clean Air Act, THSC Chapter 382; and (ix) regulations, rules, guidelines, or standards promulgated pursuant to such laws, statutes and regulations, rules, guidelines, and standards as are amended from time to time.

**§ 1.4.12 Final Completion.** "Final Completion" shall mean the date when the Work of the Project has been fully performed pursuant to the Contract Documents, including completion of any Change Orders and Owner Change Directives, but excluding warranty or repair work, and all requirements of Section 4.2 and Section 15.7 have been satisfied.

**§ 1.4.13 Final Payment.** "Final Payment" shall mean the Final Payment made to the Contractor following achievement of Final Completion of the Work in accordance with Sections 4.2 and 15.7 herein.

**§ 1.4.14 General Conditions Costs.** "General Conditions Costs" shall mean the Contractor's allowed reimbursable expenses, including dedicated on-Site management, administrative, and supervisory personnel costs, insurance, bonds, equipment, utilities and incidental work, including minor field labor and materials and other on-Site costs and expenses incurred by the Contractor in the performance of its administrative, supervisory, and management responsibilities under the Contract as further described in **Section A.1.1.3 in Exhibit A.**

**§ 1.4.15 Guaranteed Maximum Price or GMP.** "Guaranteed Maximum Price" or "GMP" means that certain not-to-exceed amount, proposed and guaranteed by Contractor and accepted by Owner, for construction of the Project in accordance with and as reasonably inferred by the Contract Documents, as such amount may be adjusted pursuant to the terms of the Contract Documents, including authorized Change Orders, as set forth in Section 3.4.3.1.

**§ 1.4.16 Hazardous Materials.** As used herein, the term "Hazardous Materials" shall mean any flammables, explosives, radioactive materials, petroleum-based materials exceeding applicable federal, state, or local regulatory limits, asbestos, polychlorinated biphenyl (PCB), radon, and other toxic substances or related materials, including without limitation substances defined as "hazardous wastes," "hazardous substances," "hazardous materials," "toxic substances," or "solid wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 2601, *et seq.*; and any other Applicable Law, including Environmental Laws, and all amendments and revisions thereto. The term "Hazardous Materials" shall be interpreted in the broadest sense to include any and all substances, materials, wastes, pollutants, oils, or governmental regulated substances or contaminants as defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, including but not limited to, asbestos and asbestos containing materials, petroleum products including crude oil or any fraction thereof, gasoline, fuels, lubricating oils and solvents, urea formaldehyde, flammable materials, explosives, PCBs, radon, radioactive materials or waste, or any other substance that, because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or threaten a present or potential hazard to human health or the environment or which may impair the beneficial use of property.

**§ 1.4.17 Owner.** The "Owner" is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's designated representative.

**§ 1.4.18 The Project.** The "Project" is identified on the first page of this Agreement. The Project includes the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

**§ 1.4.19 Project Schedule.** The "Project Schedule" is that certain schedule prepared by Contractor, and included as **Exhibit D** of the Agreement. Also referred to as the "Construction Schedule".

**§ 1.4.20 Project Team.** "Project Team" means the Owner, Contractor, Architect or other design professional retained by Owner for the Project, Owner's designated consultant(s), any Separate Contractors employed by Owner, and other consultants employed by any of them for the purpose of programming, design, construction, and commissioning of the Project. The constitution of the Project Team may vary at different phases of the Project. The Project Team will be designated by Owner and may be modified from time to time by Owner.

**§ 1.4.21 Separate Contractor.** The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements as more further discussed in Article 12.

**§ 1.4.22 Site.** "Site" means the property on which the Project is located and surrounding environs otherwise affected or impacted in performing the Work.

**§ 1.4.23 Specifications.** The "Specifications" are those portions of the Contract Documents prepared by the Architect consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

**§ 1.4.24 Subcontractor.** A "Subcontractor" is a person or entity that has a direct contract with the Contractor or a Subcontractor of any tier to perform a portion of the construction required in connection with the Work on the Project. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" includes sub-subcontractors and lower tier contractors (entities who have contracts with sub-subcontractors) but does not include a Separate Contractor retained by Owner.

**§ 1.4.25 Substantial Completion.** "Substantial Completion" shall have the meaning set forth in Section 15.6.1 herein.

**§ 1.4.26 The Work.** The term "Work" means the construction and services required by Article 1, as defined in Section 7.3 herein.

## § 1.5 Capitalization

Terms capitalized in this Agreement include those that are (1) specifically defined in this Article 1 or elsewhere in the Agreement, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

## ARTICLE 4 PAYMENT

### § 4.1 Progress Payments

§ 4.1.1 Based upon the Schedule of Values approved by Owner, Applications for Payment submitted to the Owner and Architect (if required by Owner) by the Contractor, in such form as approved by Owner with all required supporting documentation set forth herein, and Certificates for Payment issued by the Architect and/or approval of such payment by Owner, the Owner shall make progress payments as provided below and elsewhere in the Contract Documents.

§ 4.1.2 The period covered by each Application for Payment shall be one (1) calendar month ending on the last Day of the month.

§ 4.1.3 Provided that an Application for Payment, including supporting documentation as required herein, is received by the Owner and the Architect (if required by Owner) not later than the **25th** Day of a month, the Owner shall make payment of the amount certified by Architect or otherwise approved by Owner to the Contractor not later than the **25th** Day of the following month in accordance with *Tex. Gov't. Code § 2251*. If an Application for Payment is received by the Owner and Architect (if required by Owner) after the application date fixed above, payment of the amount certified by Architect or otherwise approved by Owner shall be made by the Owner not later than **thirty (30)** Days after Owner and/or Architect receives the Application for Payment, in accordance with *Tex. Gov't. Code § 2251*. For purposes of *Tex. Gov't. Code § 2251.021(2)* and (3), the "date of performance/receipt of invoice" is the date the Architect signs the formal Application for Payment or the date the Owner approves the Application for Payment. No Application for Payment is complete unless it fully reflects all required modifications, attaches all required supporting documentation, and is certified by the Architect or approved by Owner. Contractor shall make payment to Subcontractors in the appropriate amounts not later than the tenth (10th) Day after the date Contractor receives payment or otherwise in accordance with *Tex. Gov't. Code § 2251.022*. *Tex. Gov't. Code § 2251.021* shall govern amounts certified and approved by Owner but remaining unpaid and which are overdue pursuant to said statute.

§ 4.1.4 For each progress payment made prior to Final Completion of the Work, the Owner may withhold **five percent (5%)** of the total Application for Payment being submitted. Retainage will be managed in conformance with *Subchapter B, Tex. Gov't. Code § 2252*. Contractor shall not withhold retainage from Subcontractors in amounts that are any percentage greater than that withheld in this Section 4.1.4. Any reduction or release of retainage, or portion thereof should Owner decide to do so, shall not be a waiver of (1) any of the Owner's rights to retainage in connection with other payments to the Contractor or (2) any other right or remedy that the Owner has under the Contract Documents, at law, or in equity.

§ 4.1.5 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

only as allowed under *Tex. Gov't. Code § 2251.021 et seq.*

§ 4.1.6 The Application for Payment shall be made in the AIA G702 and G703 format or other such format required by Owner based on the percentages of completion and the approved Schedule of Values set forth in **Exhibit E**. Contractor shall submit with each Application for Payment any reports, documentation, and evidence required by the Owner or Architect to substantiate the Contractor's Application for Payment, including, but not limited to, payrolls, petty cash accounts, receipted invoices, or invoices with check vouchers attached, to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment. Contractor shall, in each Application for Payment, provide certification that, to the best of its knowledge, information and belief, the Work has been performed in accordance with this Agreement and the Contract Documents.

§ 4.1.6.1 Each Application for Payment shall be based on the most recent Schedule of Values submitted by the Contractor in accordance with the Contract Documents as approved by Owner. The Schedule of Values shall allocate

the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee, Contractor's General Conditions Costs, any allowances, and Contingency shall be shown as separate items. Each Application for Payment shall be accompanied by a duly executed and acknowledged Contractor's Sworn Statement showing all Subcontractors with whom the Contractor has entered into subcontracts, the amount of each subcontract, the amount requested for any Subcontractor in the Application for Payment and the amount to be paid to the Subcontractor from such progress payment; conditional lien waivers from the Contractor and all Subcontractors, all invoices received from vendors; and such other information, documentation and materials as the Owner, the Project Manager, or the Architect may reasonably require. With each Application for Payment, the Contractor shall also provide copies of all Subcontractors' monthly applications for payment to substantiate the Contractor's Application for Payment.

**§ 4.1.6.2** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the percentage of that portion of the Work that has actually been completed and is supported by documentation required by Owner as set forth in Sections 4.1.6, 4.1.6.1, and 4.1.7. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 4.1.7** In addition to other required items set forth in Article 15, each Application for Payment shall be accompanied by the following documentation, statements, and information, all in form and substance reasonably satisfactory to the Owner and in compliance with Applicable Law:

- .1 an Excel spreadsheet identifying all Subcontractors together with a brief description of the scope of work for each (i.e., masonry, HVAC, etc.), the subcontract amount for the scope of work and any retainage agreement. Said information shall be required to be furnished with the first Application for Payment. Each Application for Payment thereafter shall identify the Subcontractor, the total contract amount and the amount requested in the particular Application for Payment for each Subcontractor and shall be accompanied by the information required in Section 4.1.6. Contractor may reference the latter back to the Schedule of Values by line item number or other reference point approved by Owner;
- .2 a monthly job cost report from Contractor;
- .3 statement, under oath, by Contractor that all bills or obligations incurred by Contractor, for which previous Applications for Payment have been submitted and paid by Owner, have been paid by Contractor, or, if some bill or obligation remains outstanding, the statement shall fully disclose the outstanding bill or obligation by stating the name of the person or entity to whom the bill or obligation remains outstanding, the amount of the outstanding bill or obligation, and the basis or reason why such bill or obligation has not been paid;
- .4 an updated Construction Schedule;
- .5 a duly executed Conditional Waiver and Release on Progress Payment on the Texas statutory form, from the Contractor waiving all such liens or claims for payment for the Work covered by the Application for Payment being submitted conditioned only upon receipt of payment;
- .6 a duly executed Conditional Waiver and Release on Progress Payment on the Texas statutory form, from each Subcontractor, waiving all liens or claims for payment for the Work covered by the Application for Payment being submitted, conditioned only upon receipt of payment;
- .7 beginning with the second Application for Payment, a duly executed Unconditional Waiver and Release on Progress Payment on the Texas Statutory form, from Contractor and each Subcontractor waiving all liens or claims for payment for the Work covered by previously paid Applications for Payment;
- .8 if payments are to be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored on the Site, or at some other location agreed upon in writing, such payments shall be conditioned upon submission to Owner of bills of sale or other commercially reasonable procedures reasonably satisfactory to Owner to establish Owner's title to such materials or equipment or otherwise protect Owner's interest. Any materials stored off-Site must be stored in compliance with Section 4.1.10.

**§ 4.1.8** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 4.1.8.1** The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined in the Schedule of Values, not to exceed the actual Cost of the Work incurred by Contractor for such period. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 13.2;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the Site at a location agreed upon in writing and in conformance with Section 4.1.10;
- .3 That portion of the Costs allocable to specially fabricated materials or other orders requiring advance deposits or interim payment before completion and/or delivery, which advances shall be made as approved by Owner;
- .4 the Contractor's Fee (subject to Section 4.1.4). No Fee will be paid on approved Change Orders to the extent Contractor has already included Fee in said Change Order.

**§ 4.1.8.2** The amount of each progress payment shall then be reduced by:

- .1 Retainage as set forth in Section 4.1.4;
- .2 The aggregate of previous payments made by the Owner;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor unless the Work has been performed by others the Contractor intends to pay;
- .4 The shortfall, if any, indicated by the Contractor in the documentation required by Section 4.1.6 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .5 Amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 15.4.3.

**§ 4.1.9** In taking action on the Contractor's Applications for Payment, the Owner and/or Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be a representation of examination or verification as set forth in Section 15.4.2 herein.

**§ 4.1.10** Unless otherwise provided in the Contract Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the Site at a location agreed upon in writing. Notwithstanding anything herein to the contrary, if it is reasonably necessary for the Contractor to purchase materials or equipment and store them off-Site in order to maintain the Construction Schedule, Owner shall not unreasonably withhold, condition or delay its approval of payment for such items. Payment for materials and equipment stored on or off the Site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the Site, for such materials and equipment stored off the Site. Contractor shall also comply with the following requirements:

- .1 Title to such materials shall be vested in the Owner as evidenced by documentation satisfactory in form and substance to the Owner.
- .2 With each Application for Payment, the Contractor shall submit to the Owner a written list identifying each location where materials are stored off the Site and the value of materials at each location. Timestamped photos of stored materials must be provided with each Application for Payment.
- .3 The Contractor shall procure insurance satisfactory to the Owner for materials stored off the Site in an amount not less than the total value thereof and insurance to cover materials in transit from the off-Site storage facility to the Site. Contractor shall provide necessary Certificates of Insurance to demonstrate compliance with the insurance requirements.
- .4 Owner shall have the right to make inspections of the storage areas at any time. Warehouse records, receipts and invoices shall be available to Owner upon request to verify the quantities of materials and their disposition. Warehouse and storage facilities must be insured and bonded in such amounts as to cover stored materials.
- .5 Such materials shall be (1) protected from diversion, destruction, theft, and damage to the satisfaction of the Owner; (2) specifically marked for use on the Project; and (3) segregated from other materials at the storage facility.



In the event of termination for convenience or cause, or default by the Contractor, the items in storage upon which payment has been made, will be promptly turned over to Owner at a location designated by Owner. All surety bonds provided by Contractor for the Project shall cover any claim respecting materials stored off-Site.

§ 4.1.11 Contractor shall defend, indemnify and hold harmless Owner and any related entities from any liens or bond claims filed by any Subcontractor, laborer, or materialman claiming through Contractor. Such indemnification may be provided through the payment bond required for the Work. If the payment bond fails to satisfy, remove or discharge any such lien or claim, upon **five (5) Days'** notice from Owner that such failure has occurred, Contractor will defend, indemnify and hold harmless Owner from such claim and shall be responsible for all damages, losses, payments, costs and fees, including attorney's fees, incurred by Owner as a result of such claims.

## § 4.2 Final Payment

§ 4.2.1 Neither Final Payment nor any remaining retained amount shall become due, and the Project shall not have been deemed to have reached Final Completion, until all of the following have occurred:

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond Final Payment;
- .2 Owner has received confirmation of approval of such completion by the Texas Department of Health and Human Services, if required, and any Authorities Having Jurisdiction, as evidenced by a certificate of occupancy or similar final inspection certificate; provided, however, that if the Contractor may only obtain a temporary certificate of occupancy due to (i) Owner's failure to complete Owner's obligations that are conditions precedent to obtaining a permanent certificate of occupancy and (ii) additional requirements made by Authorities Having Jurisdiction covering the items not in this Contract, then Final Payment shall be made on the basis of such temporary certificate of occupancy;
- .3 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment and the Owner's auditors have approved same for payment;
- .4 a final Certificate for Payment has been issued (if Owner requires Architect to certify payment) or Owner has approved Final Payment after completion of the process set forth in Section 4.2.2 below;
- .5 Owner has received consent of surety to Final Payment;
- .6 Owner has received a duly executed Unconditional Waiver and Release on Progress Payment from the Contractor and all Subcontractors on the Texas statutory form that waives all liens or claims for payment for the Work covered by all previous Applications for Payment paid by Owner;
- .7 Owner has received a duly executed Conditional Waiver and Release of Lien on Final Payment from Contractor and all Subcontractors, waiving, upon receipt of Final Payment, any and all mechanic's liens or any other claim for payment;
- .8 Owner has received bills paid affidavit which conforms to the provisions of *Tex. Prop. Code § 53.085*;
- .9 Contractor has submitted all final close-out documents as required by Owner, including, but not limited to the following:
  - i. A certificate evidencing that insurance required by the Contract Documents to remain in force after Final Payment is currently in effect and will not be canceled or allowed to expire until at least **thirty (30) Days'** prior written notice has been given to the Owner;
  - ii. Written statement that Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
  - iii. Certification that all of the requirements for Substantial Completion under Section 15.6 have been met and all Work, including all punchlist items, commissioning of equipment, and training of Owner's staff, has been fully and finally completed; has been fully and finally completed;
  - iv. A complete list of Subcontractors and principal material and equipment suppliers, including addresses, telephone numbers, and name of individuals to contact who are familiar with the Project (including the Contractor);
  - v. As-Built Drawings, operating and maintenance manuals, warranties, guaranties, finish selections, Material Safety Data Sheets, and all other industry standard close out documents; and
  - vi. All other documentation required by the Contract Documents;
- .10 Contractor has satisfied all other conditions precedent to Final Payment described in the Contract

## Documents.

All documents including scanned copies of required signed originals shall be acceptable in digital format. Payments which may otherwise become due to the Contractor at or following the point of Substantial Completion shall be withheld contingent upon receipt of the above and all other requirements for Final Payment. Owner's acceptance of these items is required for Final Payment.

**§ 4.2.2** The Owner's auditors will review and report in writing on the Contractor's final accounting within a commercially reasonable period of time after delivery of the final accounting to the Owner. Based upon such Cost of the Work as the Owner's auditor's report determines to be substantiated by the Contractor's final accounting, provided the other conditions of Section 4.2.1 have been met, if requested by Owner the Architect will, within **ten (10)** Days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 15.4.3. If Owner does not request Architect to issue a final Certificate for Payment, Owner will within **ten (10)** Days after receipt of the written report of the Owner's auditors, approve the final Application for Payment, or notify the Contractor in writing of the reasons for withholding all or a portion of Final Payment as provided in Section 15.4.3. The time periods stated in this Section 4.2.2 supersede those stated in Section 15.4.

**§ 4.2.2.1** If the Owner's auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to initiate final resolution of the dispute pursuant to Article 21. Pending a final resolution of the disputed amount, the Owner may pay the Contractor the amount determined by the Owner's accountant to be due the Contractor.

**§ 4.2.2.2** The Owner's Final Payment to the Contractor shall be made no later than **thirty (30)** Days after all conditions to Final Payment set forth in Section 4.2.1 above have been met, and issuance of the final accounting set forth in Section 4.2.2, subject to Owner's right to withhold pursuant to Section 15.4.3.

**§ 4.2.3** Upon Owner's request, Contractor will provide Unconditional Waiver and Release on Final Payment documents, executed by Contractor and all Subcontractors within **ten (10)** Days of receipt of Final Payment from Owner, or in the case of Subcontractors, from Contractor.

## ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

**§ 2.1** The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

☐ The date of this Agreement.

☒ A date set forth in a notice to proceed issued by the Owner.

☐ Established as follows:

*(Insert a date or a means to determine the date of commencement of the Work.)*

*(Paragraphs deleted)*

**§ 2.2** The Contract Time shall be measured from the date of commencement. Contractor shall perform the Work in accordance with the Project Schedule and the dates of Substantial Completion and Final Completion and all Interim Milestone Dates.

### § 2.3 Substantial Completion

**§ 2.3.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

*(Check the appropriate box and complete the necessary information.)*

☒ Not later than one hundred and seventy-five (**175**) calendar Days from the date of commencement of the Work.

☐ By the following date:

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(the "Required Date of Substantial Completion"). The Contractor shall diligently continue to prosecute the Work to Final Completion, in order to achieve Final Completion of the Work no later than **sixty (60)** Days following the Required Date of Substantial Completion.

**§ 2.3.2 Interim Milestone Dates.** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates ("Interim Milestone Date(s)");

Portion of Work	Substantial Completion Date
N/A	

**§ 2.3.3** If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.

### ARTICLE 3 CONTRACT SUM

**§ 3.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be:

[  
(Paragraphs deleted)

**X ]** Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below.

**§ 3.2** *Intentionally Deleted.*

**§ 3.3** *Intentionally Deleted.*

#### **§ 3.4 Cost of the Work Plus Contractor's Fee With a Guaranteed Maximum Price**

**§ 3.4.1** The Owner shall pay the Contractor, as provided in the Contract Documents, the Contract Sum for the Contractor's performance of the Work of the Contract. The Contract Sum is the Cost of the Work as defined in **Exhibit A**, including Contractor's General Conditions Costs, plus the Contractor's Fee as provided in Section 3.4.2, all of which Contractor represents shall not exceed the Guaranteed Maximum Price set forth in Section 3.4.3.1.

#### **§3.4.2 The Contractor's Fee:**

(Paragraphs deleted)

The Contractor's Fee for performing the Work of the Contract is **Fifty-Seven Thousand and No/100 Dollars (\$57,000.00)** which shall be paid in equal monthly installments over the scheduled duration of the Project.

#### **§ 3.4.2.1** The method of adjustment of the Contractor's Fee for changes in the Work:

(Paragraph deleted)

Contractor's Fee for changes in the Work shall be as agreed upon by Owner and Contractor. Such fee is agreed by Contractor to be reasonable reimbursement for, and in satisfaction of, any increase in indirect overhead or profit on said change. Contractor will not charge insurance or bond costs as an increase in any Change Order unless previously approved by Owner and then only based on demonstrated increases in actual cost to Contractor.

#### **§ 3.4.2.2** Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

(Paragraphs deleted) Any Contractor or Subcontractor overhead and profit attributable to increases in the cost of its portion of the Work, as evidenced by executed Change Order(s) identifying the same, shall not exceed **ten percent (10%)** for overhead and **five percent (5%)** for profit on the increased cost of its Work. In no event shall the total of overhead and profit payable by the Owner for changes in the Work performed by a Subcontractor and/or sub-subcontractor (regardless of the number of tiers) exceed **fifteen percent (15%)** of the actual direct labor and material cost of the changed Work. Mark-up on any Self-Performed Work will not be charged other than as Fee set forth in 3.4.2 above.

### § 3.4.3 Guaranteed Maximum Price

§ 3.4.3.1 The Contract Sum is guaranteed by the Contractor not to exceed **Seven Hundred Sixty-two Thousand Two Hundred and Twenty-Five Dollars and No/100 Dollars (\$762,225.00)** subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the "Guaranteed Maximum Price" or "GMP." Contractor assumes the risk of, and shall be responsible for, all costs that overrun the Guaranteed Maximum Price from any cause whatsoever, including costs due to otherwise excusable circumstances for which an adjustment to the Guaranteed Maximum Price would have been permitted, unless Contractor has obtained in advance of the incurring such overrun costs a Change Order to this Agreement increasing the Guaranteed Maximum Price for such costs.

### § 3.4.3.2 [Intentionally deleted.]

§ 3.4.3.3 **Alternates.** The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

Item	Price
N/A	

§ 3.4.3.3.1 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

*(Paragraph deleted)*

*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

Item	Price	Conditions for Acceptance
N/A		

### § 3.4.3.4 Unit Prices, if any:

*(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price per Unit (\$0.00)
N/A		

### § 3.4.3.5 Allowances, if any, included in the Guaranteed Maximum Price:

*(Identify each allowance.)*

Item	Price
None.	

### § 3.4.3.6 Assumptions, if any, on which the Guaranteed Maximum Price is based:

Contractor's assumptions and clarifications are indicated as such in **Exhibit F.**

§ 3.4.3.7 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.4.3.8 Rental rates for Contractor-owned equipment shall not exceed **seventy percent (70%)** of the standard rental rate paid at the place of the Project.

§ 3.4.3.9 **Construction Contingency.** The Guaranteed Maximum Price contains a separately identified contingency amount of **Forty Thousand and No/100 Dollars (\$40,000.00)** (the "Contingency") to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. Contingency shall be used to fund (i) increases in the Cost of the Work incurred by the Contractor for

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unforeseen causes to which an allowance is not assigned; or (ii) items not capable of reasonable anticipation at the time this Agreement is executed that are not the basis for a Change Order, and then only as follows: (a) the Contractor provides the Owner with a written explanation of each requested draw upon the Contingency, along with back-up documentation reasonably requested by the Owner, with each Application for Payment in which such draw of Contingency is requested, (b) each Application for Payment contains a report aggregating the Contractor's use of the Contingency, and (c) each draw on the Contingency is approved in advance by the Owner (such approval not to be unreasonably withheld). Any re-allocation of funds from the Contingency to cover increases in the Cost of Work or any other claimed costs by the Contractor must be approved by Owner in advance and in writing, such approval not to be unreasonably withheld. The Contractor shall include the Contingency amount as a separate line item in the Schedule of Values, and upon the use of part of the Contingency, that part shall be allocated to the applicable line item of the Schedule of Values. In no event shall Contingency be used for any cost incurred that is not a Cost of the Work as set forth in **Exhibit A**. Contingency is the Owner's to expend and any unused portion of the Contingency shall be returned to Owner.

**§ 3.5 Liquidated damages, if any:**

*(Insert terms and conditions for liquidated damages, if any.)*

**§ 3.5.1 All time limits stated in the Contract Documents are of the essence.** Contractor acknowledges and agrees that its failure to meet the deadlines set forth in this Agreement shall be a material breach of the Agreement and that Owner will incur substantial damages due to any failure by the Contractor to achieve Substantial Completion on or before the Required Date of Substantial Completion and any Interim Milestone Dates. If the Contractor fails to achieve Substantial Completion of the Work by the Required Date of Substantial Completion as such date may be modified in accordance with the terms of the Contract Documents, the Contractor shall pay Owner liquidated damages, and not as a penalty, \$200 per Day until Substantial Completion of the Work is achieved.

**§ 3.5.2** Owner may deduct any liquidated damages from any amounts due the Contractor, and/or Owner may require the Contractor to pay any liquidated damages, within **ten (10)** Days after Owner's request should the available contract funds be insufficient to cover the liquidated damages assessed against the Contractor. If liquidated damages are actually recovered by Owner, the above-stated liquidated damages provided for herein shall be Owner's exclusive damages remedy for the Contractor's unexcused failure to achieve Substantial Completion of the Work by the required date of Substantial Completion or Substantial Completion of any construction milestone by the Interim Milestone Date(s), but such damages shall in no way limit Owner's other rights (e.g., termination) under the Agreement or Owner's entitlement to damages for any other injury, damage or loss, other than for delay to achieving Substantial Completion of the Work by the required date of Substantial Completion or Substantial Completion of certain construction milestone(s) by the Interim Milestone Date(s), for which the Contractor may be responsible pursuant to the terms of this Agreement or Applicable Law.

**§ 3.5.3** In determining the amount(s) of liquidated damages above, Owner has carefully considered the following categories of damages and has thoughtfully determined such amount(s) accordingly: increased financing charges, cost of relocation of personnel to alternative space, costs for managing an extended schedule, costs for the Architect's extended involvement (if any), costs of storage of Owner-provided FF&E, lease extension costs, and other numerous damages. Further, the Contractor acknowledges and agrees that as of the date this Agreement is executed (i) the amount of damages Owner will incur due to the Contractor's failure to achieve Substantial Completion of the Work by the required date of Substantial Completion or Substantial Completion of certain construction Interim Milestone Date(s) as required by this Agreement are impossible or difficult to estimate, (ii) the liquidated damages set forth herein are a reasonable pre-estimate of damages that Owner will incur as a result of a delay in achieving Substantial Completion of the Work by the required date of Substantial Completion or Substantial Completion of certain construction Interim Milestone Date(s) as required by this Agreement, (iii) that the consequential damages contemplated at the time of this Agreement are uncertain and difficult to determine with exactness, and (iv) that the liquidated damages set forth herein are in proportion to the probable loss.

**§ 3.5.4** This Section 3.5 shall survive the termination of this Agreement. In the event this liquidated damage provision is held to be unenforceable or void (except when the holding is the result of a challenge by Owner), Owner shall be allowed to recover actual damages (both direct and consequential damages) caused by the Contractor's failure to achieve the applicable Contract Time requirements to the fullest extent allowed by Applicable Law.

(Paragraphs deleted)

## ARTICLE 5 DISPUTE RESOLUTION

### § 5.1 Binding Dispute Resolution

For any claim the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

☐ Arbitration pursuant to Section 21.2.2 of this Agreement

☒ Litigation in a court of competent jurisdiction.

☐ Other (Specify)

**§ 5.1.1 Limitation on Damages.** Notwithstanding anything contained herein or elsewhere in the Contract Documents to the contrary, the total amount of money recoverable from Owner (as a hospital district) on a claim for breach of contract is limited as set forth under Texas law. An award of damages may not include consequential damages (except as allowed pursuant to *Tex. Local Gov't Code* § 271.153(b)(1)), exemplary damages, or damages for unabsorbed home office overhead. Nothing in this Agreement shall be construed as a waiver of sovereign immunity; nor constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Owner. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the under this Agreement or under Applicable Law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

## ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

**§ 6.1** The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

**§ 6.1.1** The Agreement is this executed AIA Document A104™–2017, Standard Abbreviated Form of Agreement Between Owner and Contractor, as modified by the Owner and Contractor for this Project.

**§ 6.1.2** *Intentionally Deleted.*

**§ 6.1.3** The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
N/A			

**§ 6.1.4** The Specifications:  
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

See Exhibit C

Section	Title	Date	Pages
---------	-------	------	-------

**§ 6.1.5** The Drawings:  
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

See Exhibit C

Number	Title	Date
--------	-------	------

**§ 6.1.6** The Addenda, if any:

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User Notes:

(1194293298)

Number  
N/A

Date

Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are enumerated in this Article 6.

**§ 6.1.7** Additional documents, if any, forming part of the Contract Documents:

.1

*(Paragraphs deleted)*

Exhibits incorporated into this Agreement:

<b>Exhibit A:</b>	Determination of the Cost of the Work
<b>Exhibit A-1</b>	Contractor's General Conditions Costs
<b>Attachment A-1-1</b>	Contractor's Labor Rates & Labor Burden
<b>Attachment A-1-2</b>	Contractor's General Conditions Cost Template
<b>Exhibit B:</b>	Contractor's Insurance and Bonding Requirements
<b>Exhibit B-1:</b>	Form of Performance Bond
<b>Exhibit B-2:</b>	Form of Payment Bond
<b>Exhibit C:</b>	List of Drawings and Specifications
<b>Exhibit D:</b>	Construction Schedule
<b>Exhibit E:</b>	Schedule of Values
<b>Exhibit F:</b>	Contractor's Assumptions and Clarifications

*(Table deleted)*

<b>Exhibit G:</b>	Owner Provided Information
<b>Exhibit H:</b>	Owner's Special Terms and Conditions

*(Table deleted)*

.2 Other documents, if any, listed below:

*(List here any additional documents that are intended to form part of the Contract Documents.)*

N/A

**ARTICLE 7 GENERAL PROVISIONS**

**§ 7.1 The Contract Documents**

The Contract Documents consist of this Agreement and its attached Exhibits, Owner Provided Information and documents described in **Exhibit G** attached hereto, Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract Documents are listed in Section 6.1.7 and further discussed in this Article 7. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

**§ 7.2** The Contract Documents are intended to be complimentary and what is required by one shall be as binding as if required by all. If, and to the extent of, any inconsistency, ambiguity, or discrepancy in the Contract Documents and/or items that can be reasonably inferred by the Contract Documents, precedence shall be given to the Contract Documents in the following order of priority: (1) written Modifications issued after execution of this Agreement, with the Modification bearing the latest date taking precedence; (2) this Agreement, other than **Exhibit F** – Contractor's Assumptions and Clarifications, which shall be given the priority described in this Section 7.2; (3) **Exhibit F** – Contractor's Assumptions and Clarifications; and (4) the Drawings and Specifications identified in and incorporated into the Contract Documents, with those addenda and revisions bearing the latest date taking precedence. Without limiting the foregoing, the terms of the Agreement shall control over any terms in the Drawings or Specifications inconsistent therewith. Any Contractor's Assumptions and Clarifications document included in a Modification or as an exhibit to a Modification will be considered part of the Modification for the particular scope of work modified in the Modification. Any Contractor's Assumptions and Clarifications document shall clearly and precisely describe the Drawing or Specification provision, if any, the qualification or clarification seeks to qualify or clarify.

### § 7.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. The Work includes all labor, parts, supplies, skill, supervision, transportation, services and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and all other items needed to produce, construct and fully complete the Work items shown by the Contract Documents.

### § 7.4 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect, the Architect's consultants, or Owner's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, plans, Drawings, Specifications, and other similar materials.

### § 7.5 Ownership and use of Drawings, Specifications and Other Instruments of Service

**§ 7.5.1** Drawings, Specifications and other documents prepared by Architect, its consultants, other consultants retained by Owner for the Project, or by Contractor or its Subcontractors, that describe the Work to be executed by the Contractor are Instruments of Service and shall remain the property of their authors (or Owner, as may be provided in the respective contractual agreements between Owner and the respective design professional). These documents are for use on the Project only and the Contractor and its Subcontractors shall not use the documents on any other projects. The Contractor shall be permitted to retain one record set of such documents. All other copies of the documents shall be returned to their respective authors or owners or otherwise suitably accounted for. The Contractor and its Subcontractors are authorized to reproduce and use portions of the documents as necessary and appropriate for the execution of the Work. Submission or distribution of the documents to meet official regulatory requirements or for other purposes in connection with the Project shall not diminish the author's or owner's rights.

**§ 7.5.2** Contractor agrees that all Instruments of Service prepared by Contractor pursuant to this Agreement are subject to the rights of Owner in effect on the date of execution of this Agreement. These rights include the right to use, duplicate and disclose such subject matter and data, in whole or in part, in any manner for alterations, additions, remodels or maintenance; and to have others do so including production of the instruments of service in response to a public information request pursuant to *Tex. Gov't. Code Ch. 552*. If the instruments of service produced by Contractor are subject to copyright protection, Contractor hereby grants to Owner a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such and to authorize others to do so. Owner shall be further authorized to make subsequent use of any instruments of service for any and all future renovations, Modifications, alterations, maintenance, repairs, and the like, of the Project. Contractor shall include appropriate provisions to achieve these purposes in all Subcontracts entered into that produce information subject to copyright protection. All Instruments of Service, including Shop Drawings and Drawings and Specification, shall be stamped "Confidential Information" by the Architect and/or Architect's Consultants, Contractor, or Subcontractors.

**§ 7.5.3** Contractor shall promptly provide copies of all Instruments of Service in Contractor's possession to Owner upon completion, termination, or cancellation of this Agreement for any reason, including all copies in any form or medium specified by Owner in this Agreement, whether written, digital, or electronic.

### § 7.6 Digital Data Use and Transmission

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

### § 7.7 Intentionally Deleted.

### § 7.8 Severability

The invalidity of any part or portion of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract Documents. To the extent any provision or portion thereof in this Agreement or the Contract Documents is held to be void, voidable, invalid, or unenforceable, then the remainder of this Agreement will not be affected thereby and will remain valid and fully enforceable and the parties agree that to the extent possible, any provision that is determined void, voidable, invalid or unenforceable will



be reformed to the minimum extent necessary to make it valid and enforceable and will be enforced and enforceable as reformed.

#### **§ 7.9 Notice**

**§ 7.9.1** Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed, as set forth in Sections 19.4 and 19.5, and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission

*(Paragraphs deleted)*

if the parties have mutually agreed in writing to provide notice by such electronic transmission.

**§ 7.9.2** Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed, as designated in Sections 19.4 and 19.5, by certified or registered mail, or by courier providing proof of delivery.

#### **§ 7.10 Relationship of the Parties**

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the other members of the Project Team. Contractor shall exercise its best skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests and Applicable Laws. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents. Contractor shall immediately give written notice to Owner upon its determination that any of the information referenced in the preceding sentence is not being timely provided by Owner, with such notice detailing what information is not being timely provided. Nothing in this Section 7.10 shall be interpreted as creating a fiduciary duty between the parties.

### **ARTICLE 8 OWNER**

#### **§ 8.1 Information and Services Required of the Owner**

**§ 8.1.1** In accordance with *Tex. Bus. & Comm. Code §56.054(e)*, Owner will provide Contractor with reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract if requested in writing by the Contractor.

**§ 8.1.2** The Owner shall furnish, as available, surveys and a legal description of the Site.

**§ 8.1.3** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

*(Paragraph deleted)*

#### **§ 8.2 Owner's Right to Stop the Work**

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents or Applicable Laws, or repeatedly fails to carry out the Work in accordance with the Contract Documents or Applicable Laws, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

#### **§ 8.3 Owner's Right to Carry Out the Work**

**§ 8.3.1** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a **ten (10)** Day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including, without limitation, Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor shall be reasonable and necessary. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor

shall pay the difference to the Owner. The rights of the Owner hereunder shall not give rise to any duty on the part of the Owner to exercise same for the benefit of the Contractor or any other person or entity. If providing the above-referenced prior notice to the Contractor is not reasonable because of emergency or exigent circumstances, the Owner shall provide only such prior notice that is reasonable under the circumstances.

§ 8.3.1.1 After the Work is complete, the Owner may make emergency repairs to the Work if necessary to prevent further damage, or if the Contractor does not promptly respond to a notice of a condition requiring repairs. Contractor shall be responsible to Owner for this cost if the reason for the repairs is defects in the Work. If payments then or thereafter due the Contractor are not sufficient to cover such costs, the Contractor shall pay the difference to the Owner.

### § 8.3.2 Acceleration for Owner's Convenience

§ 8.3.2.1 In the event Owner desires to accelerate the Construction Schedule, Owner shall so notify the Contractor in writing.

§ 8.3.2.2 Upon receipt of such written instruction, Contractor shall require its personnel and its Subcontractors to work such overtime hours and/or to increase their respective work forces as may be reasonably necessary to meet Owner's acceleration goals.

§ 8.3.3 Unless a Change Order is issued and approved by Owner, such written acceleration instructions shall be considered an Owner Change Directive and Contractor shall respond in accordance with Article 7 herein.

§ 8.4 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable here from shall be deemed or construed to (i) make Contractor the agent, servant, or employee of the Owner, or (ii) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner or any of its authorized representatives with respect to the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein. The presence of the Owner or its representatives at the Site does not imply acceptance or approval of the Work. Owner is interested in only the results obtained and not in the methods used in achieving the results.

§ 8.5 Any review and approval by Owner of any Designs, Specifications, and other Instruments of Service is only for conformance with the general design concept of the Work and does not extend to the Contract Documents or any other obligation of the Contractor. The Contractor is responsible for confirming and correlating all dimensions, fabrication and construction techniques, coordinating Contractor's Work with that of other trades, and the satisfactory performance of the Work in accordance with the Contract Documents.

## ARTICLE 9 CONTRACTOR

### § 9.1 Review of Contract Documents and Field Conditions by Contractor

§ 9.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the Site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, condition, layout and nature of the Site and surrounding areas including all access requirements, hoisting requirements and conditions, and Site logistics; (2) prevailing climatic conditions; (3) anticipated labor supply and costs; (4) availability and cost of materials, tools and equipment; (5) any applicable policies, procedures, rules and restrictions of Owner relating to construction on the real property, including but not limited to any credentialing, HIPAA, and health screening protocols required by Owner, including all requirements of Owner's Special Conditions attached hereto as **Exhibit H** and Owner Provided Information in **Exhibit G** and any other Owner provided information or documents; (6) Applicable Law; (7) Executive Orders by local, State of Texas, or federal government authorities or other Authorities Having Jurisdiction; and (8) other similar issues. The Owner shall not be required to make any adjustment in either the GMP or Contract Time in connection with any failure by the Contractor or any Subcontractors to comply with the requirements of this Section. Contractor and its Subcontractors shall be solely responsible for providing a safe place for the performance of the Work.

§ 9.1.2 The Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant

to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the Site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents. Notwithstanding any limitations in *Tex. Bus. & Comm. Code § 59.001* et. seq. regarding Contractor's responsibilities for defects in plans, Drawings, and Specifications, Contractor acknowledges that it is responsible for the consequences of design defects in, and does warrant the accuracy, adequacy, sufficiency, and suitability of, plans, Drawings, Specifications, or other design documents that it provides and that are provided to the Contractor by its agents, contractors, Subcontractors, fabricators, or its consultants of every tier. Further, Contractor is responsible where Contractor provides input and guidance on plans, Drawings, Specifications or other design documents through work product signed and sealed by a licensed professional that is incorporated into plans, Drawings, Specifications, or other design documents used in the Work.

**§ 9.1.3** The Contractor acknowledges the Owner does not represent or warrant the accuracy or completeness of information provided by the Owner related to existing conditions and locations of existing utilities and services. Such information if provided, is provided to the Contractor as a matter of convenience and does not substitute for the Contractor using due diligence to reasonably observe and or to access space to determine errors, inconsistencies or omissions. Contractor shall verify the exactness of grades, elevations, dimensions, or locations given on any Drawings issued by Architect or other design professionals retained by Owner. In all cases of interconnection of the Work with existing conditions, Contractor shall verify at the Site all dimensions relating to such existing conditions.

**§ 9.1.4** Recognizing the limitations under *Tex. Bus. & Comm. Code § 59.001* et. seq., and as indicated in Section 9.1.1 above, if upon review of the plans, Drawings, Specifications, or other design documents, the Contractor discovers a defect, inaccuracy, inadequacy or insufficiency in the plans, Drawings, Specifications or other design documents, the Contractor shall promptly report to the Owner, in writing, the existence of any known defect in the plans, Drawings, Specifications, or other design documents that is discovered by the Contractor, or that reasonably should have been discovered by the Contractor, using ordinary diligence, before or during construction. If the Contractor fails to disclose a defect as required by *Tex. Bus. and Comm. Code § 59.051(b)*, then the Contractor will be liable for the consequences of defects that result from the failure to disclose.

## **§ 9.2 Supervision and Construction Procedures**

**§ 9.2.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. Contractor shall commence, diligently prosecute, and complete the Work in accordance with the Contract Documents and within the Contract Time set forth in the Agreement. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the Site safety thereof and, except as stated below, shall be fully and solely responsible for the Site safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and shall not proceed until resolution of any such concerns.

## **§ 9.2.2 CONTRACTOR IS RESPONSIBLE TO OWNER FOR ALL ACTS AND OMISSIONS OF CONTRACTOR'S EMPLOYEES, SUBCONTRACTORS AND THEIR AGENTS AND EMPLOYEES, AND ANY OTHER PERSONS PERFORMING ANY OF THE WORK UNDER A CONTRACT WITH CONTRACTOR OR ITS SUBCONTRACTORS OR ANYONE OVER WHOM CONTRACTOR OR ITS SUBCONTRACTORS EXERCISE CONTROL.**

**§ 9.2.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work. Contractor shall provide competent supervision of all phases of the Work and inspect the Site at intervals appropriate to the stage of construction and the status of the Project. Contractor will keep the Owner informed of the progress of the Work and potential for delays foreseeable by Contractor, and shall guard the Owner against defects and deficiencies in the Work. Contractor shall be responsible for correction of any Work rejected as not being in accordance with the Contract Documents.

**§ 9.2.4** Contractor has the responsibility to ensure that all Subcontractors, and their agents and employees, adhere to the Contract Documents and that they order and provide materials to the Site on time, taking into account the current

market and delivery conditions. Contractor shall coordinate its performance of the Work with that of all others on the Project, including deliveries, storage, installations and construction of utilities.

**§ 9.2.5** As between Owner and Contractor, the Contractor: (a) assumes full responsibility for the safety of all persons employed or utilized by the Contractor or under the Contractor's control and supervision; (b) shall maintain complete supervision and control over the Contractor's agents, employees, and Subcontractors; and (c) agrees to perform all of the Contractor's obligations under this Agreement in accordance with the Contractor's own methods subject to compliance with this Agreement. In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

### **§ 9.3 Labor and Materials**

**§ 9.3.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor shall check all materials entering into the Work and shall keep full accounts thereof. Contractor shall cause all labor, materials and other such items and services to be readily available as and when required in or needed for the orderly and timely progress of the Work.

**§ 9.3.2** The Contractor shall at all times furnish an adequate supply of qualified and legal workers and proper materials and shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

**§ 9.3.3** The Contractor may make a substitution only with the consent of the Owner, and in accordance with a Modification.

**§ 9.3.4 Prevailing Wage Requirements.** Contractor and each Subcontractor shall, at all times, comply with *Tex. Gov't. Code § 2258* with respect to the payment of wages for the Work performed under this Agreement. It shall be mandatory upon the Contractor and any Subcontractor to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them to perform the Work under this Agreement. A Contractor or Subcontractor who violates the provisions of Chapter 2258, Government Code, shall pay to Owner, in addition to such other sums for which the Contractor is liable under the statute, the sum of Sixty Dollars and No/100 (\$60.00) for each worker employed for each Day or part of the Day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as required by *Tex. Govt. Code § 2258.023(b)*.

**§ 9.3.4.1** Except as may otherwise be agreed to by Owner and Contractor, the applicable prevailing rate of per diem wages for each respective craft or type of worker performing work by or through the Contractor (including workers of all Subcontractors) pursuant to this Agreement and the prevailing rate for legal holiday and overtime work shall be the respective prevailing wage rates for Tarrant County as determined by the United States Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), as currently amended.

### **§ 9.4 Warranty**

*(Paragraph deleted)*

**§ 9.4.1** The Contractor warrants to the Owner that the Work will be performed in a good and workmanlike manner and that materials and equipment furnished under the Contract will be of specified quality, recent manufacture, and new. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents, will be complete in all parts and with the required finishes, in accordance with approved practices and customs, and will be free from defects. Work, materials, or equipment not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The warranties set out in this subsection are in addition to and not exclusive of any other warranties or guarantees set out in other places in the Contract Documents or implied under Applicable Law, or the Contractor's obligations under the corrective period set

out in Article 18 below. Contractor's obligation to perform the Work in a good and workmanlike manner in accordance with the Contract Documents is absolute and no actions of Owner shall act to waive Contractor's obligations hereunder.

**§ 9.4.2** Contractor shall furnish individual written warranties to the Owner for each product, building component, system, or equipment specified to have a written warranty and incorporating the warranty of this Section 9.4. Such separate warranties shall be deemed to run from Substantial Completion regardless of whether the product, building component, system or equipment was placed into service prior to Substantial Completion.

**§ 9.4.3** If extended warranties in addition to those required by the Contract Documents are available from Subcontractors or manufacturers, Contractor shall advise Owner of such availability and the cost thereof and, if requested by Change Order, shall purchase the extended warranty for Owner's benefit, in which event the Change Order shall reflect an increase in the GMP equal to the cost of the extended warranty submitted to and accepted by Owner.

**§ 9.4.4** Contractor shall assign all Subcontractor and manufacturer warranties and guarantees directly to the Owner. During the one (1) year period set forth in Section 18.2, Contractor shall enforce the Subcontractors' and manufacturers' warranties for the benefit of Owner or its assigns. The Contractor further agrees to perform the Work in such a manner so as to preserve any and all such guarantees and warranties. Contractor's warranties shall be in addition to any warranties, indemnities, claims, rights, actions or remedies that Owner may have in the Contract Documents, or at law, or in equity, for defective work or breach of the Contract Documents or otherwise provided under any repose period.

#### **§ 9.5 Taxes**

Owner is a hospital district and political subdivision of the State of Texas. Materials and services utilized in the construction of the Project may be exempt from state and local sales and use taxes pursuant to *Tex. Tax Code §151.309(5)*. Contractor is responsible for compliance with all tax exemptions applicable to the Project. Owner will process all invoices submitted by Contractor to ensure the invoices comply with Owner's tax-exempt status.

#### **§ 9.6 Permits, Fees, Notices, and Compliance with Laws**

**§ 9.6.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other trade permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required. The Contractor shall also obtain and pay all charges for all approvals for barricades and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

**§ 9.6.2** The Contractor shall comply with and give notices required by Applicable Laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public Authorities Having Jurisdiction applicable to the performance of the Work. If the Contractor performs Work knowing, or in the exercise of reasonable judgment should have known, it to be contrary to Applicable Laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public Authorities Having Jurisdiction, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

#### **§ 9.7 Allowances**

The Contractor shall include in the GMP all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the Site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the GMP but not in the allowance.

#### **§ 9.8 Contractor's Construction Schedules**

**§ 9.8.1** The Contractor's Construction Schedule shall be provided by Contractor to Owner prior to the commencement of the Work and shall be attached as **Exhibit D** once approved by Owner. The Construction Schedule, and all schedule updates, shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Construction Schedule shall be computerized Critical Path Method (CPM) with fully editable logic with adequate detail so the

schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities. All Construction Schedule updates shall address the subject of how the Contractor intends to address any critical path delays previously encountered.

**§ 9.8.2** The Contractor shall perform the Work in general accordance with the most Construction Schedule submitted to and approved by the Owner. However, the Contract Time shall not be extended except by Change Order or Construction Change Directive.

## **§ 9.9 Submittals**

**§ 9.9.1** The Contractor shall review for compliance with the Contract Documents and submit to the Architect and Owner Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's Construction Schedule and in such sequence as to allow the Owner reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals except that Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Owner's approval of Shop Drawings, Product Data, Samples, or similar submittals unless the Contractor has specifically informed Owner in writing of such deviation at the time of the submittal and (1) the Owner has given written approval to the specific deviation as a minor change in the Work or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation.

**§ 9.9.2** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

**§ 9.9.3** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

**§ 9.9.4** The Contractor shall maintain at the Site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction ("As-Built Documents" or "As-Built"), and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be delivered to the Architect and Owner upon completion of the Work for inclusion in the Project's record Drawings. These documents shall be available to Architect and Owner during the progress of the Work for their review for general conformance with the Project. As-Built Documents shall contain, but not be limited to: (i) the actual location of the underground utilities and appurtenances as referenced to permanent surface improvements; (ii) the location of internal utilities and appurtenances concealed in building structures; and (iii) significant changes during the construction process and significant detail not shown in the original Contract Documents. The As-Built Documents are to be kept accurately and no work shall be permanently concealed until the required information has been recorded. As part of the Project closeout submittals, and as a condition precedent to release by Owner of Final Payment, Contractor shall submit one (1) set of accurate and complete As-Built Documents to Architect for Architect's review for general conformance with the Project and inclusion, as appropriate, into the record Drawings.

**§ 9.9.5** The Contractor shall maintain a daily log containing a record of weather, Subcontractors working on the Site, number of workers, work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect. Unless otherwise directed by Owner, the

Contractor shall prepare and promptly distribute meeting minutes of all monthly and weekly meetings held in furtherance of the Project.

#### **§ 9.10 Use of Site**

**§ 9.10.1** The Contractor shall confine operations at the Site to areas permitted by the Owner and Applicable Laws, and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment. The Contractor shall be solely responsible for providing a safe place for the performance of the Work.

**§ 9.10.2** The Contractor, Subcontractors, and any entity for whom the Contractor is responsible shall, other than as required by Applicable Law, not erect any sign on the Site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

**§ 9.10.3** Without limitation of any other provision of the Contract Documents, the Contractor shall use best efforts to minimize any interference with the occupancy or beneficial use of any areas and buildings adjacent to the Site and that portion of the Work of which Owner has partial occupancy. The Contractor shall use its best efforts to not interfere with the use of and enjoyment by neighboring landowners of their property and shall keep noise and dust to the lowest levels reasonably possible to accomplish the Work. Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner.

#### **§ 9.11 Cutting and Patching**

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

#### **§ 9.12 Cleaning Up**

The Contractor shall thoroughly wash and clean all glass and mirror surfaces and leave the Work neat and ready for occupancy and use before final turnover. The Contractor shall use its best efforts to prevent dust. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At the end of each week, the Contractor shall remove waste materials, and rubbish and shall properly store the Contractor's tools, construction equipment, machinery and surplus materials that could cause a hazard from and about the Project. Contractor shall restore to satisfactory condition all new and existing walks, roads, curbs and other interior or exterior improvements that have been damaged as a result of operations under the Agreement. Upon completion of the Work, the Contractor shall remove any remaining waste materials, rubbish, tools, construction equipment, machinery, surplus materials, and temporary protections, and shall leave the completed Project ready for use and occupancy and with all Work in new condition and working order. If the Contractor fails to clean up the designated area within twenty-four (24) hours' written notice, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor for the costs associated therewith.

#### **§ 9.13 Access to Work**

The Contractor shall provide the Owner and Architect, and any authorized representatives or inspectors of Owner, with access to the Work in preparation and progress wherever located.

#### **§ 9.14 Royalties, Patents and Copyrights**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner harmless from loss on account thereof as set forth in Section 9.15.3 below, but shall not be responsible for such indemnity, defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor knows that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such indemnity, defense or loss unless such information is promptly furnished to the Owner and the Architect.

#### **§ 9.15 Indemnification**

**§ 9.15.1 TO THE FULLEST EXTENT PERMITTED BY LAW, AND EXCEPT AS SET OUT IN §9.15.2 AND §9.15.3 BELOW, CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND OWNER, ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES (THE "INDEMNITEES" AND INDIVIDUALLY "INDEMNITEE"), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES,**

INCLUDING, BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF THE WORK, OR OTHER ACTIVITIES OF CONTRACTOR OR ANY SUBCONTRACTOR, INCLUDING, BUT NOT LIMITED TO (1) THE VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE OR OTHER APPLICABLE LAW BY CONTRACTOR OR ANY SUBCONTRACTOR (OR ANY OF THEIR EMPLOYEES) OF ANY TIER; (2) ANY BOND OR LIEN CLAIM ASSERTED BY ANY SUBCONTRACTOR OF ANY TIER FOR WORK OR MATERIALS PROVIDED TO THE PROJECT, TO THE EXTENT PAYMENT HAS BEEN RECEIVED FROM OWNER; (3) BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF OWNER OR ANY OF THE INDEMNITEES.

*(Paragraphs deleted)*

**§ 9.15.2 INDEMNITY – EMPLOYEE INJURY CLAIMS.** IN ADDITION TO THE INDEMNIFICATION PROVIDED IN SUBSECTIONS 9.15.1 AND 9.15.3, CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS OWNER AND ALL INDEMNITEES FROM AND AGAINST ANY CLAIM, DAMAGE, LOSS, OR EXPENSE (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES AND COSTS), ARISING OUT OF, RESULTING FROM OR ATTRIBUTABLE TO ANY CLAIM OF BODILY INJURY, SICKNESS, DISEASE OR DEATH OF ANY EMPLOYEE OF CONTRACTOR, ANY SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY CONTRACTOR OR ANY OF ITS SUBCONTRACTORS, BROUGHT BY SUCH INJURED EMPLOYEE OR THE EMPLOYEE'S WORKERS COMPENSATION INSURANCE CARRIER (HEREINAFTER REFERRED TO AS AN "EMPLOYEE INJURY CLAIM"), EVEN TO THE EXTENT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART, BY THE SOLE OR CONCURRENT NEGLIGENCE OF OWNER OR ANY INDEMNITEE, IT BEING THE EXPRESSED INTENT OF THE OWNER AND CONTRACTOR THAT, IN SUCH EVENT, THE CONTRACTOR IS TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE OWNER AND INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, WHETHER IT IS ALLEGED TO BE THE SOLE OR CONCURRING CAUSE OF THE BODILY INJURY, SICKNESS, DISEASE OR DEATH OF THE EMPLOYEE. THE INDEMNIFICATION OBLIGATIONS UNDER THIS PARAGRAPH SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. CONTRACTOR SHALL PROCURE LIABILITY INSURANCE COVERING ITS OBLIGATIONS UNDER THIS SECTION.

**§ 9.15.3 INDEMNITY – COPYRIGHT INFRINGEMENT CLAIMS.** IN ADDITION TO THE INDEMNIFICATION PROVIDED IN SUBSECTIONS 9.15.1 AND 9.15.2 ABOVE, CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS OWNER AND ANY INDEMNITEE(S) FROM AND AGAINST ANY CLAIM, DAMAGE, LOSS, OR EXPENSE (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES AND COSTS) ARISING OUT OF OR RELATING TO ANY CLAIM AGAINST OWNER OR INDEMNITEES ASSERTING INFRINGEMENT OR ALLEGED INFRINGEMENT OF A PATENT, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT IN CONNECTION WITH ANY INSTRUMENTS OF SERVICE FURNISHED BY OR THROUGH CONTRACTOR OR ITS SUBCONTRACTORS, EVEN TO THE EXTENT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED OR IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART, BY THE SOLE OR CONCURRENT NEGLIGENCE OF OWNER OR ANY OF THE INDEMNITEES OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM.

**§ 9.15.4** In claims against any person or entity indemnified under Section 9.15.2 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligations hereunder shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

**§ 9.15.5** It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under this Section 9.15 or the Additional Insured requirements of the Contract Documents, such legal limitations are made a part of the contractual obligations and shall operate to amend the obligations to the minimum extent necessary to bring the provision into conformity with the requirements of such



limitations, and as so modified, the obligations shall continue in full force and effect. Should any provision in this Agreement be held invalid, unenforceable or contrary to public policy, law, statute or ordinance, then the remainder of the provision, paragraph, Section and/or Agreement shall not be affected thereby and shall remain valid and fully enforceable.

**§ 9.15.6** Insurance covering the indemnification obligations of Contractor under the foregoing paragraphs shall be provided by Contractor, but Contractor's liability to Owner as provided herein shall not be limited by the amount of the insurance coverage(s) required of and provided by Contractor.

**§ 9.15.7** In the event that any claim, damage, demand, cost, loss, expense or injury arises or is made, asserted or threatened against Owner or any Indemnatee, Owner shall have the right to withhold from any payments due or to become due to Contractor an amount sufficient in its judgment to protect and indemnify the Indemnatee from any and all such claims, damages, demands, costs, losses, expenses or injuries (including, without limitation, legal fees and disbursements) except to the extent covered by insurance proceeds.

**§ 9.15.8** The obligations contained in this Section 9.15 shall survive the expiration, completion, abandonment and/or termination of the Agreement and Final Completion of the Work.

## **ARTICLE 10 ADMINISTRATION OF THE CONTRACT**

**§ 10.1** The Architect and/or Owner will provide administration of the Contract as described in the Contract Documents until the date the Owner approves and makes Final Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. Notwithstanding anything to the contrary herein, the Owner reserves the right to perform all obligations of the Architect set forth hereunder itself.

**§ 10.2** Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner.

**§ 10.3** The Architect and/or Owner will visit the Site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect and/or Owner will conduct inspections to determine the date or dates of Substantial Completion, issue a Certificate of Substantial Completion, and conduct an inspection to assist the Owner to determine the date of Final Completion. However, neither the Architect nor the Owner will be required to make exhaustive or continuous on-Site inspections to check the quality or quantity of the Work. Neither the Owner nor the Architect will have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

**§ 10.4** On the basis of the Site visits, if requested by Owner, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent Construction Schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. Neither the Owner nor the Architect will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Owner nor the Architect will have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

**§ 10.5** Based on the Owner's and/or Architect's evaluations of the Work and of the Contractor's Applications for Payment, together with the information required in Sections 4.1 and 4.2, the Architect, if required by Owner, will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 10.6** The Owner and/or Architect have authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

**§ 10.7** The Architect and/or Owner will review and approve or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

(Paragraphs deleted)

## ARTICLE 11 SUBCONTRACTORS

§ 11.1 A "Subcontractor" is a person or entity that has a direct contract with the Contractor or a Subcontractor of any tier to perform a portion of the construction required in connection with the Work on the Project. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" includes all sub-Subcontractors, suppliers, vendors, and other lower tier contractors of every tier but does not include a Separate Contractor retained by Owner.

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the Subcontractors proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor to whom the Owner has made reasonable written objection within **ten (10)** Days after receipt of the Contractor's list of Subcontractors. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the GMP and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work which the Contractor, by the Contract Documents, assumes toward the Owner, (2) require Subcontractors to carry the insurance in the type and amount required by this Agreement and **Exhibit B** or such lesser amount as approved by Owner for a particular Subcontractor, (3) indemnify the Owner and Indemnitees to the same extent as required by the Contractor under Section 9.15, and (4) make the same warranties for the applicable portion of the Work to the Owner as required by the Contractor under the Contract Documents. The Contractor shall promptly inform the Owner in writing of any inability to comply with these requirements.

### § 11.4 Award of Subcontracts and Other Contracts for Portions of the Work

§ 11.4.1 Contractor shall publicly advertise and solicit competitive lump sum bids/proposals from Subcontractors for the performance of all major elements of the Work. Criteria for determining the bid/proposal that provides the best value to the Owner shall be established by the Contractor and Owner and included in the request for bids/proposals. The Contractor shall notify the Owner in advance in writing of the date it will receive the bids/proposals.

§ 11.4.1.1 The Contractor shall schedule and conduct pre-bid conferences with interested bidders/proposers and Subcontractors, and record minutes of the conferences. Contractor shall also respond in writing, to all parties attending, to questions raised in these conferences. All Subcontractor bids/proposals shall be opened by Contractor in the presence of Owner. The Contractor, and Owner shall review all Subcontractor bids/proposals in a manner that does not disclose the contents of any bid/proposal to persons not employed by the Owner or Contractor during the selection process. All bids/proposals shall be publicly available after award of the contract or within **seven (7)** Days after the date of final selection, whichever is later.

§ 11.4.1.2 If Contractor reviews, evaluates, and recommends to Owner a bid/proposal from a Subcontractor, but Owner requires another bid/proposal to be accepted, Owner shall compensate Contractor by a change in the Contract Time or GMP for any additional cost and risk that Contractor incurs because of Owner's requirement that the other bid/proposal be accepted.

§ 11.4.1.3 Contractor may seek to self-perform portions of the Work identified for self-performance in the bid/proposal strategy ("Self-Performed Work"). Contractor must submit a bid/proposal for the Self-Performed Work in the same manner as all other Subcontractors, but must submit such bid/proposal directly to the Owner at least **twenty-four (24)** hours prior to receiving similar bids from other parties. After reviewing all the bids, the Owner will determine whether the Contractor's bid/proposal provides the best value for Owner, which determination is final. If selected as the best value, the Contractor must perform the approved Self-Performed Work in accordance with the same terms and conditions as its other Subcontractors. For payment purposes, the Contractor shall account for Self-Performed Work in the same manner as it does all other Subcontractor costs.

§ 11.4.2 The Contractor shall not contract with proposed person or entity or substitute a previously-selected Subcontractor, person, or entity if Owner has made a reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

## **ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

§ 12.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces and insurance obligations, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 12.2 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

§ 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of a Separate Contractor.

## **ARTICLE 13 CHANGES IN THE WORK**

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the GMP and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner and Contractor, or by written Construction Change Directive signed only by the Owner. Upon execution of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive.

§ 13.2 Adjustments in the GMP and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. When the Owner and Contractor agree on adjustments to the GMP and Contract Time arising from a Construction Change Directive, the Owner will prepare a Change Order. Unless otherwise provided in the Change Order, agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including but not limited to all direct and indirect costs associated with such change, and any and all adjustments to the GMP and Contract Time.

§ 13.3 The Owner will have authority to order minor changes in the Work not involving adjustment in the GMP or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be affected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the GMP or Contract Time, the Contractor shall notify the Owner and shall not proceed to implement the change in the Work without Owner's written approval.

§ 13.4 If the Contractor encounters conditions at the Site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist, the Contractor shall promptly provide notice to the Owner before conditions are disturbed and in no event later than **seven (7) Days** after the first observance of the conditions. The Owner and/or Architect will promptly investigate such conditions and, if the Owner and/or Architect determine that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, may recommend an equitable adjustment in the GMP or Contract Time, or both, the actual adjustment of which is subject to Owner approval. If the Owner and Contractor cannot agree on an adjustment in the GMP or Contract Time, the Contractor may make a Claim pursuant to Article 21. If the Owner and/or Architect determines that the conditions at the Site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the

Contractor in writing, stating the reasons. Notwithstanding the foregoing, no adjustment in the GMP or Contract Time shall be allowed to the extent that the Contractor knew, or reasonably should have known of those conditions prior to the date of this Agreement.

**§ 13.5** In the event of a dispute with respect to amounts payable under a Construction Change Directive, Owner shall pay all undisputed amounts and Contractor shall promptly proceed with and diligently prosecute such change in the Work. Any amounts in dispute and withheld by Owner shall be promptly paid after the earlier of: (a) settlement of the dispute by execution of a final Change Order document; or (b) a resolution of the dispute pursuant to Article 21 of this Agreement.

**§ 13.6** Except as permitted in the Agreement or herein with regard to amounts to which Owner is entitled to payment or offset arising from Contractor's breach or default hereunder, a change in the GMP or the Contract Time shall be accomplished **only** by an Owner Change Directive or Change Order, without prejudice, however, to Contractor's right to assert its entitlement to a change in the GMP or Contract Time in accordance with Section 21. No course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, nor refinement or further detailing of Drawings and Specifications, shall be the basis of any claim to any increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents and Contractor hereby releases and waives all claims for extras, changes or increases therein, unless such extras, changes and increases are specifically authorized by a written Change Order or Owner Change Directive, signed by Owner, in accordance with this Article 13.

## **ARTICLE 14 TIME**

**§ 14.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing this Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**§ 14.2** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

**§ 14.3** The date of Substantial Completion is the date certified by the Owner in accordance with Sections 15.6.3.

*(Paragraph deleted)*

### **§ 14.5 Delays**

**§ 14.5.1** If the critical path of the Work of the Contractor is delayed at any time in the commencement or progress of the Work (1) by fire, unusually severe weather, epidemics, pandemics, unavoidable casualties, or other causes beyond the Contractor's control and not due to or resulting from the negligence, inattention or fault of Contractor or any of its Subcontractors ("Excusable Delay"); (2) by an act or neglect of the Owner, or of an employee of Owner, or of a Separate Contractor; or (3) by changes ordered in the Work, and Contractor has provided a notice of potential delay within **forty-eight (48)** hours of Contractor becoming aware of such event or circumstance, the Contract Time may be extended by Change Order for such time as may be reasonably determined and approved by Owner, and then only for the amount of time Contractor has been actually and directly delayed and only if allowed under Section 14.5.2 below. Notwithstanding the foregoing, the Contractor acknowledges and agrees that neither adjustments in the Contract Time nor adjustments in the GMP will be permitted if any delay (1) is caused by the negligence or fault of the Contractor and/or its Subcontractors or (2) could have been avoided by the Contractor's timely notice to the Owner of the delay. Contractor acknowledges the limitations of this provision and shall cooperate with Owner to at all times minimize and mitigate the impact of any delay to completion of the Work.

**§ 14.5.1.1 Adverse/Abnormal Weather.** If adverse weather conditions are the basis for a request for an extension of Contract Time, such request shall be documented by data substantiating that weather conditions were unusually severe for the period of time, and could not have been reasonably anticipated. To establish the existence of abnormal weather, the Contractor must submit documentation which establishes that the weather conditions experienced fall outside of the customary ranges of weather data published by the National Oceanic and Atmospheric Administration (NOAA) for the area in which the Project is located during the 5-year climactic average immediately preceding the date of the Contract (provided that abnormally high temperatures will not be considered a basis for a request for an extension of the Contract Time). Regardless of actual weather conditions, any Day in which the Contractor is able to work fifty percent (50%) or more of its scheduled work force shall not be counted as an abnormal weather Day for purposes of calculating weather related time extensions.

§ 14.5.2 Except as may otherwise be expressly provided in the Contract Documents, extensions of time shall be the Contractor's sole remedy for delay, unless the delay is caused by the actions or inactions of Owner, its Architect, or any Owner's representative (an "Owner-Caused Delay" or "OCD"). Contractor shall advise Owner of any OCD within **48 hours** of Contractor becoming aware of such event to allow Owner to mitigate the delay. In the event of an OCD, Contractor's recovery shall be limited to the increase, if any, of direct costs incurred by the Contractor in performing the Work as a result of that portion of delay or delays which cause the Contract Time to be extended. Direct costs do not include home office overhead, profit, or any consequential damages, lost opportunity costs, impact damages, or other similar remuneration. The Owner's reasonable exercise of any of its rights or remedies under the Contract Documents, regardless of the extent or frequency, shall not under any circumstances be construed as interference with the Contractor's performance of the Work. In no event shall the Contractor be entitled to any other compensation or recovery of any damages in connection with any excusable delay. Nothing contained herein shall prohibit recovery by Owner of liquidated damages for Contractor's delay pursuant to the Agreement. Contractor shall not be compensated nor given extensions of time for delays that are unexcused.

§ 14.5.3 In the event Contractor falls behind the critical path of the Project Schedule by more than **ten (10) Days**, for any reason that does not justify an extension under this Section 14.5, Contractor shall develop and deliver a recovery plan to the Owner with a recovery schedule and a program of re-sequencing of the Work and other steps Contractor shall take to meet the requirements of the Contract with regard to the Contract Time. Contractor shall not be entitled to compensation from the Owner or any increase in the GMP for the scheduled recovery efforts, except as to causes of delay to the critical path as allowed under Section 14.5.2 above and not caused by the Contractor or its Subcontractors. No approval or consent by the Owner of any plan for re-sequencing or acceleration of the Work submitted by Contractor pursuant to this paragraph shall constitute a waiver by Owner of any damages or losses which Owner may suffer and for which Contractor is liable hereunder by reason of such re-sequencing or the failure of Contractor to meet the Required Date of Substantial Completion or other requirements of the Contract with regard to the Contract Time.

## **ARTICLE 15 PAYMENTS AND COMPLETION**

### **§ 15.1 Schedule of Values**

§ 15.1.1 The Schedule of Values is attached as **Exhibit E**. The Schedule of Values shall allocate the entire GMP among the various portions of the Work, and shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. The Schedule of Values shall follow the trade divisions of the Specifications so far as practicable and shall not overvalue early job activities. Except as otherwise agreed in writing by the parties, the Contractor's General Conditions Costs, Contingency, allowances, and Contractor's Fee shall be included as separate line items. Any modifications or amendments to the Schedule of Values must be approved by the Owner. This Schedule of Values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 15.1.2 The allocation of the GMP under this Section 15.1 shall not constitute a guaranteed maximum price for each individual line item in each Schedule of Values.

§ 15.2 *Intentionally Deleted.*

*(Paragraphs deleted)*

### **§ 15.3 Applications for Payment**

§ 15.3.1 The Contractor shall submit to the Owner and Architect (if required) an itemized Application for Payment prepared in accordance with the Schedule of Values for completed portions of the Work and shall submit said Application for Payment with all required documentation within the timeframes established in, and meeting the requirements of, Sections 4.1 and 4.2 above. The application shall be notarized; be supported by all data substantiating the Contractor's right to payment that the Owner require; and shall reflect retainage.

§ 15.3.2 *Intentionally Deleted.*

§ 15.3.3 Payments shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work, provided that Contractor has met all requirements set forth in Section 4.1.10. If approved in advance by the Owner and Contractor has met all requirements set forth in Section 4.1.10, payment may similarly be made for materials and equipment stored, and protected from damage, off the Site at a location agreed upon in writing.

**§ 15.3.4** The Contractor warrants that title, but not the risk of loss or damage, to all Work covered by an Application for Payment will pass to the Owner no later than the earlier to occur of (i) incorporation into the Work, or (ii) the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **§ 15.4 Certificates for Payment**

**§ 15.4.1** If the Owner requests Architect to provide certification of payments, the Architect will, within **seven (7)** Days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.4.3. If the Owner does not request Architect provide certification of payments, then Owner will within **seven (7)** Days after receipt of the Contractor's Application for Payment, either approve Contractor's Application for Payment for such amount as the Owner determines is properly due, or notify the Contractor in writing of its reasons for withholding certification in whole or in part as provided in Section 15.4.3.

**§ 15.4.2** The issuance of a Certificate for Payment or approval of an Application for Payment by Owner will not be a representation that either the Architect or Owner has (1) made exhaustive or continuous on-Site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) made a detailed examination, audit, or arithmetic verification of the documentation submitted by Contractor, or other supporting data; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the GMP. The issuance of a Certificate for Payment by the Architect (if requested by the Owner) shall constitute a recommendation to the Owner in respect to the amount to be paid. This recommendation is not binding on the Owner if, in Owner's opinion, legitimate reasons for nonpayment exist including, but not limited to the reasons set out in Section 15.4.3. If the Owner declines to make payment upon a Certificate of Payment, the Owner shall promptly notify the Contractor of the reasons therefor.

**§ 15.4.3** The Architect may withhold a Certificate for Payment and/or the Owner may withhold payment if the Contractor fails to provide all of the information included in the Application for Payment as required in Article 4, this Article 15, and the Contract Documents. The Architect and/or Owner may also withhold issuance of a Certificate for Payment or payment, in whole or in part, to such extent as may be necessary in their reasonable opinion to protect the Owner from loss for which the Contractor is responsible because of:

- .1 defective Work not remedied;
- .2 Contractor has been paid and labor, material or equipment claims are filed by any Subcontractor and the payment bond surety has not responded to the claim as required by the payment bond;
- .3 failure of the Contractor to make payments properly to Subcontractors or others for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the GMP;
- .5 damage to the Owner or a Separate Contractor to the extent it is either not covered by Contractor's insurance or Contractor's insurer has not confirmed the existence or amount of coverage;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover damages for the anticipated delay permitted under the Contract Documents;
- .7 failure to carry out the Work in accordance with the Contract Documents;
- .8 the assessment of any fines or penalties against Owner as a result of Contractor's failure to comply with Applicable Laws;
- .9 discovery that Work associated with a prior payment was not in fact achieved, or that Work associated with a prior payment contained defective Work;
- .10 Contractor owes Owner liquidated damages or other amounts under the terms of this Agreement;
- .11 failure of the Contractor or its Subcontractors or other personnel or entities under the control of Contractor to update the Construction Schedule or to attend Project meetings as required by Owner and/or the Contract Documents;
- .12 Contractor has failed to provide any or keep in force or failed to cause a Subcontractor to provide or keep in force any insurance required by this Agreement; or

- .13 any material breach of the Agreement or any other reason for which Owner is entitled to withhold payment under this Agreement.

§ 15.4.4 When the above reasons for withholding certification and/or payment are removed, payment will be made for amounts previously withheld (although Owner may require Contractor to submit an Application for Payment covering such previously withheld payment). If the Architect withholds a certification for payment under Section 15.4.3, or if Owner otherwise becomes aware that Contractor is not making proper payments to Subcontractors, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered; provided, however, nothing contained herein shall obligate Owner to issue such joint checks.

§ 15.4.4.1 If Contractor disputes any determination by Architect and/or Owner with regard to all or any part of an Application for Payment or a Certificate of Payment, Contractor shall nevertheless expeditiously continue to prosecute the Work but shall be entitled to make a Claim as provided in Article 21.

### § 15.5 Progress Payments

§ 15.5.1 Based upon complete and accurate Applications for Payment, including all required documentation as set forth herein and in Article 4, submitted to the Owner by the Contractor, the Owner shall make progress payments to the Contractor in the manner and within the time provided in Section 4.1. Contractor shall use all sums advanced to it pursuant to this Agreement solely for the purpose of performance of the Work in accordance with the Contract Documents. Contractor shall promptly pay each Subcontractor in the appropriate amounts not later than **ten (10) Days** after the date Contractor receives payment from Owner or otherwise in accordance with *Tex. Gov't. Code § 2251.022*. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to lower-tier Subcontractors in a similar manner.

§ 15.5.2 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor except as may otherwise be required by law.

§ 15.5.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of defective Work or Work that does not comply with the Contract Documents or industry standards.

*(Paragraph deleted)*

§ 15.5.4 Contractor shall maintain a detailed and accurate accounting system that shall be necessary for the proper financial management of the Project. Contractor's records and receipts shall allow for ready identification of all charges included in contracts, subcontracts, purchase orders, Change Orders, invoices and Applications for Payment.

### § 15.6 Substantial Completion

§ 15.6.1 In addition to such other requirements and conditions as set forth in the Agreement, Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy and utilize the Work for its intended use; provided, however, as a condition precedent to Substantial Completion, in addition to such other requirements and conditions as set forth in this Agreement, the Texas Department of Health and Human Services ("TDHHS") and any other Authority Having Jurisdiction over the Project has certified that the Work is complete and can be occupied, all systems and facilities necessary for the Owner's occupancy of the premises have been installed and are in good operating order and condition, equipment has been fully tested, balanced, and commissioned, Owner's staff has been properly trained on all equipment, and Owner has received all certificates of occupancy or their equivalent (which may be temporary) and any other permits, approvals, licenses, and other documents from any Authority Having Jurisdiction thereof necessary for the beneficial occupancy of the Project (or if the same cannot be delivered for reasons not the fault or responsibility of Contractor, nevertheless all Contractor's obligations necessary to the issuance of such certificates, permits, approvals, or licenses will have been performed); and the Contractor has certified that all remaining punchlist items (as provided in Section 15.6.2) can be completed within **thirty (30) Days**. In general, the only remaining Work shall be minor in nature, so that the Owner could occupy and utilize the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the normal business operations, and any punchlist items may be completed within the time periods as established in the Agreement for Final Completion following Substantial Completion.

§ 15.6.1.1 Contractor shall achieve Substantial Completion of the Work no later than the date established in Section 2.3. Contractor shall achieve completion of all punchlist items no more than **thirty (30)** Days after Contractor reaches Substantial Completion. Final Completion of the Work, which without limitation shall include the delivery of all close-out documents, the completion of requirements of Section 15.6.1 above, and Contractor's submission of the final accounting, shall be achieved within the time period provided in Section 2.3 which shall be no more than **sixty (60)** Days after achieving Substantial Completion.

§ 15.6.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner and Architect (if required by Owner) a comprehensive punchlist of items to be completed or corrected prior to Final Payment. Failure to include an item on such punchlist does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 15.6.3 Upon receipt of the Contractor's punchlist, the Owner and/or Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When it is determined that the Work or designated portion thereof is substantially complete, the Certificate of Substantial Completion will be issued to establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the punchlist accompanying the Certificate of Substantial Completion. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 15.6.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate of Substantial Completion. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

#### § 15.7 Final Completion and Final Payment

§ 15.7.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner and, upon the Owner's request, the Architect will promptly make such inspection and, when the Owner and the Architect (if the Architect is required to certify payment) find the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment (if the Architect is required to certify payments) stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-Site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate for Payment is due and payable. The issuance of the final Certificate for Payment by Architect (or Owner's written approval of Contractor's final Application of Payment if Architect is not required to certify payments), will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to Final Payment have been fulfilled.

§ 15.7.2 Neither Final Payment nor any remaining retained percentage shall become due, and the Project shall not be deemed to have reached Final Completion until the Contractor satisfies all of the requirements contained in Sections 4.2 and 15.7 and elsewhere in the Contract Documents.

§ 15.7.3 The making of Final Payment shall not constitute a waiver of claims by the  
(Paragraphs deleted)  
Owner.

§ 15.7.4 Acceptance of Final Payment by the Contractor, a Subcontractor shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment or those claims that would otherwise survive completion and acceptance of the Work and Final Payment as allowed under Texas law.

§ 15.7.5 **Audit Rights.** Owner shall have the right, at any time and upon reasonable notice, to verify and audit the details of Contractor's billings, certificates, accountings, cost data, and statements, and any other accounting data or data supporting Contractor's Application for Payment, before or after any payment, by (1) inspecting the books and records



of Contractor during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Contractor's employees; (4) visiting the Site; and (5) any other reasonable action. Contractor's records shall be organized and maintained in its files by each Application for Payment period and shall be kept on the basis of generally accepted accounting principles and in conformance with the Texas State Auditor's Office requirements. Contractor acknowledges that Owner will audit Contractor at the beginning of the Project to verify General Conditions Cost information, including labor burden, and will verify records before making Final Payment under this Agreement. Additional audits may be conducted throughout the Project as reasonably required by the Owner. This provision shall survive any termination of this Agreement.

## **ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY**

### **§ 16.1 Safety Precautions and Programs**

*(Paragraphs deleted)*

**§ 16.1.1** As between the Owner and Contractor, the Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Owner assumes no responsibility or liability for the physical condition or safety of the Site. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1** employees on the Work and other persons who may be affected thereby;
- .2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody, or control of the Contractor or any Subcontractor; and
- .3** other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall comply with, and give notices required by Applicable Laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public Authorities Having Jurisdiction bearing on safety of persons and property and their protection from damage, injury, or loss with respect to the means and methods of the performance of the Work. Contractor recognizes that the Site may include a functioning hospital, medical facilities, and/or buildings with administrative functions that requires all entrants comply with and preserve maximum security and sterility requirements within all areas of the Site, whether or not under construction. Contractor will, at all times, implement, comply with, and continue to monitor compliance with Owner's safety, security and sterility requirements and procedures.

**§ 16.1.2** The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.1.2 and 16.1.1.3. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

**§ 16.1.3** The Contractor shall be responsible for any fines, penalties or charges by any regulatory body by reason of any violation of safety or health regulations by the Contractor or any Subcontractor or their forces. The Contractor shall also be responsible for reimbursement of any OSHA fines incurred by the Owner for Site safety conditions created or controlled by the Contractor that result in the Owner receiving a citation under the OSHA multi-employer citation provision. If the Contractor fails to pay or contest any such fines, penalties or charges, the Owner may, upon notice to the Contractor, pay them and deduct such amount from monies due or to become due to the Contractor.

**§ 16.1.4** The Contractor shall implement, erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting barricades, markings danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities of dangers and hazards created by openings, stairways, falling materials, open excavations, impairments to life and fire barriers or systems, and all other hazardous conditions. The Contractor shall also be responsible for all measures reasonably necessary to protect the other buildings on the premises in which the improvements are being constructed. Any damage to such property or improvements shall be promptly repaired by the Contractor. If Contractor fails to repair the damage within **three (3)** Days of notification by Owner, the Owner may, without prejudice to other remedies the Owner may have repair the damage and deduct the cost of such repair from payments

then or thereafter due the Contractor. All barricades shall comply with the Owner's requirements and the requirements of the Contract Documents.

**§ 16.1.5** When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the Work, as necessary, from injury by any cause.

**§ 16.1.6** The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

**§ 16.1.7** The Contractor shall promptly remedy damage and loss to property referred to in this Section 16.1 caused in whole or in part by the Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Section 16.1.1, 16.1.2 and 16.1.3. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

## **§ 16.2 Hazardous Materials and Substances**

**§ 16.2.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding Hazardous Materials. If the Contractor encounters Hazardous Materials not addressed in the Contract Documents or not brought to the Site by the Contractor or its Subcontractors and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a Hazardous Material, including but not limited to asbestos, radon, or polychlorinated biphenyl (PCB), encountered on the Site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

**§ 16.2.2** Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory or qualified environment consultant to verify the presence or absence of the Hazardous Material reported by the Contractor and, in the event such Hazardous Material is found to be present, to cause it to be rendered harmless. When the Hazardous Material has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. In the event the Work on the critical path is delayed and the other requirements for an extension of time set forth in this Agreement are satisfied, the Contract Time shall be extended appropriately via Change Order and the GMP increased in the amount of the Contractor's reasonable additional costs of such delay, which adjustments shall be accomplished as provided in Article 13. Notwithstanding the foregoing, in those instances in which Contractor had notice of the presence of such materials through information reviewed by Contractor or in those instances where the presence of those materials is caused by Contractor or its agents, Contractor shall not be entitled to a Claim for any delays, disruption or interference it encounters.

**§ 16.2.3** The Owner shall not be responsible under this Section 16.2 for Hazardous Materials brought to the Site by the Contractor. The Contractor shall be responsible for materials or substances required by the Contract Documents. Contractor shall be responsible for identification, abatement, cleanup, control, removal, remediation and/or disposal of any Hazardous Material in or on the Site brought to the Site by the Contractor or any Subcontractor under this Contract. Contractor shall comply with all Specifications respecting, and shall obtain any and all permits necessary for, the legal and proper handling, transportation, and disposal of such Hazardous Materials.

**§ 16.2.4** Contractor agrees that it shall not transport to, use, generate, dispose of, or install at the Site any Hazardous Materials, except in accordance with Applicable Law. Further, in performing the Work, Contractor shall not cause any release of Hazardous Materials into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water unless required by the Contract Documents. In the event Contractor engages in any of the activities prohibited in this Section 16.2 or fails to stop Work as provided in Section 16.2.1, to the fullest extent permitted by law, and except as provided otherwise in Section 9.15 above, Contractor hereby indemnifies, defends, and holds harmless the Indemnitees and their respective officers, agents, employees, and tenants from and against any and all claims, damages, losses, causes of action, suits and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incident to or resulting from the activities prohibited in this Section 16.2 or Contractor's failure to stop Work as required, except to the extent that such damage, loss or expense is due to the sole, joint, or concurrent fault or negligence of the Indemnitee seeking indemnity.

## ARTICLE 17 INSURANCE AND BONDS

*(Paragraphs deleted)*

§ 17.1 Contractor shall purchase and maintain insurance and provide bonds are set forth in **Exhibit B**. Contractor will comply, at all times, with all insurance requirements of Owner. In the event of any failure by Contractor to comply with the provisions of **Exhibit B**, Owner may, at its option, on notice to Contractor, suspend or terminate the Agreement for cause. Alternatively, Owner may purchase such insurance at Contractor's expense.

### § 17.2 Performance and Payment Bonds

Contractor will comply, at all times, with all bonding requirements of Owner and as required by Applicable Law. Payment and Performance Bond requirements are set forth in **Exhibit B**.

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

## ARTICLE 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly correct Work rejected by the Owner or Architect for failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one (1) year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.

§ 18.2.1 At Final Payment, Contractor shall provide to Owner a complete and accurate schedule of the dates upon which the corrective periods or express warranties will expire.

§ 18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

§ 18.4 The one-year period for correction of Work may be extended only with respect to portions of Work first performed after Substantial Completion, and then by the period of time between Substantial Completion and the actual completion of that portion of the Work. In no other event shall the one-year period for correction of Work be extended by corrective Work performed by Contractor pursuant to this Article 18.

*(Paragraph deleted)*

## ARTICLE 19 MISCELLANEOUS PROVISIONS

### § 19.1 Successors and Assigns

The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Contract Documents. Contractor shall not assign the Contract without written consent of the Owner, nor shall Contractor assign any monies due or to become due to it hereunder without the written consent of the Owner. If Contractor attempts to make such an assignment without such consent, Contractor shall nevertheless remain legally responsible for all obligations under the Contract.

### § 19.2 Governing Law / Venue

The Contract shall be governed by the law of the State of Texas without regard to its conflicts of laws principles. Venue is proper only in the district courts of Tarrant County, Texas.

### § 19.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by Applicable Laws shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to Owner, or with the appropriate public Authority Having Jurisdiction, and shall bear all related costs of tests, inspections, and approvals. However, Contractor shall advise Owner as to the required tests, inspections and approvals that are required for the Work. Contractor will also assist Owner in setting up the required tests, inspections and approvals, coordinating the testing/inspection dates, and assist the Owner in selecting the testing/inspecting companies and/or contacting the required public Authorities Having Jurisdiction. The Contractor shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner and Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or Applicable Law or regulations prohibit the Owner from delegating their cost to the Contractor; provided, however, that all costs and expenses incurred following a failed test, inspection, or approval (including costs of repeated testing and compensation for the services of Architect and/or other Owner expenses) shall be at the sole cost and expense of Contractor, and such costs and expenses shall not be reimbursable under this Agreement. The Contractor shall directly arrange and pay for tests, inspections, or approvals that are required due to a failure of Contractor to construct the Work in compliance with the Contract Documents, including, but not limited to, re-tests or re-inspections as set forth above. No inspection performed or failed to be performed shall constitute a waiver of any of the Contractor's obligations or be construed as an approval or acceptance of any nonconforming or defective Work.

### § 19.4 The Owner's representative:

*(Name, address, email address and other information)*

**Jill Farrell**  
**JPS Health Network**  
1500 South Main Street  
Fort Worth, Texas 76104  
Telephone: 817-702-9998  
Email: jill.farrell@jpshealth.org

and

**Daphne Walker**  
**Sr. Vice President, Chief Legal Counsel**  
1500 South Main Street  
Fort Worth, Texas 76104  
Telephone: 817-702-9988  
Email: DWalker10@jps.org

### § 19.5 The Contractor's representative:

*(Name, address, email address and other information)*

**Shane Griffin, Vice President**  
**Hutcherson Construction, Inc.**  
1020 Harrison Ave.  
Arlington, Texas 76011  
Telephone: 817-467-5422

§ 19.6 Neither the Owner's nor the Contractor's representative shall be changed without **ten (10) Days'** prior notice to the other party.

§ 19.7 **Owner's Special Terms and Conditions.** Contractor and its Subconsultants shall fully comply with the Owner's Special Terms and Conditions attached hereto as **Exhibit H**.

**§ 19.8 Attorneys' Fees.** If any action at law or in equity is necessary to enforce or interpret the terms of this Contract, the Court shall determine the prevailing party and award to such prevailing party, in addition to any other relief to which such party is entitled to recover, its reasonable attorneys' fees, expert witness fees, costs, and other reasonable expenses incurred in such proceeding, but only insofar as allowed under Applicable Law.

**§ 19.9 No Waiver.** No consent or waiver, express or implied, by either party to the Agreement, or of any breach or default by the other in the performance of any obligations hereunder, shall be deemed or construed to be a consent or waiver to or of any other breach or default by such party hereunder. Failure on the part of any party hereto to complain of any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder.

**§ 19.10 Partial Invalidity.** The invalidity of any part or portion of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract Documents. To the extent any provision or portion thereof in this Agreement or the Contract Documents is held to be void, voidable, invalid, or unenforceable, then the remainder of this Agreement will not be affected thereby and will remain valid and fully enforceable and the parties agree that to the extent possible, any provision that is determined void, voidable, invalid or unenforceable will be reformed to the minimum extent necessary to make it valid and enforceable and will be enforced and enforceable as reformed.

**§ 19.11 Multiple Counterparts.** This Contract may be executed in multiple original counterparts, each of which shall be of equal dignity. Faxed or electronically scanned signatures shall be sufficient for the execution and delivery of this Contract.

**§ 19.12 Survival.** All provisions of the Contract that by their nature survive termination of this Contract or Final Completion of the Work, including, without limitation, all warranties, indemnities, indemnity obligations, confidentiality obligations, and obligations to litigate disputes, shall remain in force and effect after Final Completion or any termination of the Contract.

## **ARTICLE 20 TERMINATION OF THE CONTRACT**

### **§ 20.1 Termination by the Contractor**

If Architect is requested by Owner to certify payment and Architect fails to certify payment as provided in Section 15.4.1 for a period of **thirty (30)** Days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of **thirty (30)** Days after the date required for payment, the Contractor may, upon **seven (7)** additional Days' written notice to the Owner, terminate the Contract and recover from the Owner, as its sole recovery for such breach, payment for Work executed, including reasonable overhead and profit thereon, and actual costs incurred by reason of such termination, but only to the extent allowed under *Tex. Local Gov't. Code § 271.153(b)* and only if the basis for such termination has not been removed or cured prior to the effective date of termination.

### **§ 20.2 Termination by the Owner for Cause**

**§ 20.2.1** The Owner may terminate the Contract if the Contractor:

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 disregards Applicable Law(s);
- .4 assigns the Contract of any part thereof in violation of the Contract Documents;
- .5 sublets Work in violation of the Contract Documents;
- .6 becomes insolvent or makes a general assignment for the benefit of Contractor's creditors, or a trustee or receiver is appointed for Contractor or for any of its property;
- .7 fails to commence the Work in accordance with the provisions of this Agreement;
- .8 fails to diligently prosecute the Work to completion thereof in an efficient, timely workmanlike, skillful and careful manner and in strict accordance with the provisions of the Contract Documents (including the Required Date of Substantial Completion);
- .9 abandons any or all of the Work to be performed under the Contract; or
- .10 otherwise does not fully comply with the Contract Documents or otherwise materially breaches the Agreement.

§ 20.2.2 When any of the above reasons exists, the Owner may, without prejudice to any other remedy the Owner may have and after giving the Contractor **seven (7) Days'** written notice, terminate the Contract and take possession of the Site and of all materials thereon, as well as all equipment, tools, and construction equipment and machinery thereon paid for by Owner, and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 20.2.4 If the unpaid balance of the GMP exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 20.2.5 If, after termination of this Contract under this Paragraph, it is determined that the Contractor was not in default or that sufficient cause to terminate hereunder did not exist, the rights and obligations of the parties shall be determined as if the termination had been issued for the convenience of the Owner as provided in Section 20.3 below.

### § 20.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor

*(Paragraphs deleted)*

for: (a) the Work properly executed in accordance with the Contract Documents prior to the effective date of termination, including any profit and overhead thereon and (b) the direct, actual, and unavoidable costs incurred by Contractor in terminating the Work and demobilizing the Site, including the cost of canceling subcontracts and purchase orders not assumed by Owner, and other such out-of-pocket costs incurred by Contractor to third parties with respect to termination of this Agreement. Owner shall not be liable for and Contractor shall not be entitled to payment for Work not performed, overhead or profit on Work not performed, or any other amount disallowed under *Tex. Local Gov't. Code § 271.153(b)*. The amounts owing by the Owner to Contractor pursuant to this Section shall be as specified in Contractor's final Application for Payment approved by Owner. Owner, or a replacement contractor or another designee of Owner, shall, with respect to all subcontracts and purchase orders which Owner does not elect to terminate or cause Contractor to terminate, assume the obligations of Contractor under such subcontracts and purchase orders covering the unperformed parts of the Work and properly entered into in accordance with the Agreement. In addition to payment for the Work performed prior to the effective date of termination, Owner or a replacement contractor shall be entitled to take possession of the Work and use copies of all of the files relating to the performance of the Work of Contractor in completing the Work, but excluding any confidential or proprietary information of or regarding Contractor. Contractor shall take actions necessary, or that the Owner may direct, for the protection and preservation of the Work after termination.

## ARTICLE 21 CLAIMS AND DISPUTES

### § 21.1 Claims

*(Paragraphs deleted)*

#### § 21.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 21.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

#### § 21.1.2 Notice of Claims

Unless otherwise prescribed elsewhere in the Contract Documents, Claims by the Contractor must be initiated by written notice (the "Notice of Potential Claim") to Owner, within **twenty-one (21) Days** after occurrence of the event giving rise to such Claim or within **twenty-one (21) Days** after the Contractor first recognizes the condition giving rise to the Claim, whichever is later.

### **§ 21.1.3 Time Limits on Claims**

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by Applicable Law.

### **§ 21.1.4 Continuing Contract Performance**

Notwithstanding any Claim, dispute, controversy, or question that might arise in the interpretation of any provision of the Contract Documents, the performance of any Work, the delivery of any material, the payment of any monies to Contractor, or otherwise, Contractor agrees that it will not directly or indirectly stop or delay any Work or part thereof on its part required to be performed, nor will it stop or delay the delivery of any materials on its part required to be furnished for the Work, pending the determination of such Claim, dispute, or controversy so long as Owner pays Contractor for undisputed amounts in accordance with the Agreement.

### **§ 21.1.5 Claims for Additional Cost**

**§ 21.1.5.1** If the Contractor wishes to make a Claim for an increase in the Guaranteed Maximum Price (and such increase is recoverable under the Contract Documents and allowed under Section 14.5. herein), written notice as provided herein shall be given to Owner and written approval by Owner through an authorized Change Order in accordance with the provisions of Article 13 shall be required before Contractor proceeds to execute the Work. Without limiting the requirements of Section 21.1.3, such notice shall include, to the extent then-known by the Contractor, full details and substantiating data to permit evaluation by Owner. If further or other information subsequently becomes known to the Contractor, it shall be promptly furnished to the Owner in writing. Prior notice is not required for Claims relating to an emergency endangering life or property.

**§ 21.1.5.2** Contractor shall not be entitled to recover damages in excess of those allowed under this Agreement or under Applicable Law.

### **§ 21.1.6 Claims for Additional Time**

**§ 21.1.6.1** If the Contractor intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's notice shall include the probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary; provided, however, that the Contractor shall provide to the Owner, promptly upon request, additional information regarding the status of such delay. Any change in the Contract Time resulting from such Claim and approved by Owner shall be authorized by a Change Order in accordance with the provisions of Article 13. In any Claim by Contractor for any increase in the Contract Time or the Guaranteed Maximum Price, if permitted in the Contract Documents, Contractor shall demonstrate that the event giving rise to the Claim was beyond the Contractor's control, delayed the critical path of the Project and that Contractor has provided Owner with such notice as required herein. Contractor shall provide notice of a potential delay even if Contractor is uncertain the event or circumstance will actually cause a delay in performance of the Work.

**§ 21.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that adverse weather conditions exceeded the number of Days calculated as provided at Section 14.5 and had an adverse effect on the critical path of the Construction Schedule. The Contractor shall document such Claim in writing to the Owner, within the time period set forth in Section 21.1.3. Notice of a potential delay must also have been provided within forty-eight (48) hours of Contractor becoming aware of such event or circumstance.

**§ 21.1.6.3** No extensions of time will be granted when an event of delay or hindrance has not been satisfactorily demonstrated, occurs after the expiration of the Contract Time, or when events of delay by Contractor equal, exceed or overlap the claimed delay.

### **§ 21.1.7 Waiver of Claims for Consequential Damages**

*[Intentionally deleted. Contractor may not recover consequential damages. Owner reserves all rights, remedies and defenses available to it under Texas law as a hospital district and political subdivision of the State of Texas.]*

## **§ 21.2 Dispute Resolution**

Init.

§ 21.2.1 Any claim or dispute arising out of or related to this Agreement shall be resolved by litigation in a court of competent jurisdiction in accordance with Tex. Local Gov't. Code §262.007.

§ 21.2.2 All claims and causes of action arising out of or related to this Agreement shall only be brought in accordance with Tex. Local Gov't. Code §271.153. This Section does not waive a defense or a limitation on damages available to a party to a contract, other than a bar against suit based on sovereign immunity. Nothing in this Agreement shall be construed as a waiver of sovereign immunity; nor constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Owner. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the Owner under this Agreement or under Applicable Law, shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

This Agreement entered into as of the day and year first written above.

**OWNER:**

**TARRANT COUNTY HOSPITAL DISTRICT D/B/A  
JPS HEALTH NETWORK**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Dr. Karen Duncan, CEO

**CONTRACTOR:**

**HUTCHERSON CONSTRUCTION, INC.**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Reid Hutcherson, President



**EXHIBIT A**  
**DETERMINATION OF THE COST OF THE WORK**

**[ATTACHED]**



# AIA® Document A104® – 2017 Exhibit A

## Determination of the Cost of the Work

for the following PROJECT:

*(Name, location and brief description)*

### CHEMISTRY ANALYZER REPLACEMENT

1500 South Main Street  
Fort Worth, TX 76104

### THE OWNER:

*(Name, legal status, address and other information)*

### TARRANT COUNTY HOSPITAL DISTRICT D/B/A JPS HEALTH NETWORK

1500 South Main Street  
Fort Worth, Texas 76104

### THE CONTRACTOR:

*(Name, legal status, address and other information)*

### HUTCHERSON CONSTRUCTION, INC.

1020 Harrison Ave., Arlington, Texas 76011  
Fort Worth, TX 76104

### THE ARCHITECT:

*(Name, legal status, address and other information)*

### OWT ARCHITECTS, PLLC

5049 Edwards Ranch Road, #04-138, Fort Worth, Texas 76109  
Attn: Richard Williams, Principal  
Telephone: 817-993-9844  
Email: rwilliams@owtarchitects.com

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

## ARTICLE A.1 COSTS TO BE REIMBURSED

*(Paragraph deleted)*

### § A.1.1 Cost of the Work

§ A.1.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. The Cost of the Work shall include only the items set forth in this Article A.1. Cost, as defined herein, shall be actual costs paid or incurred by the Contractor, less all discounts, rebates and salvages that are obtained by the Contractor, subject to Article A.3 of this **Exhibit A**. All payments made by the Owner pursuant to this Article A.1, whether those payments are actually made before or after the execution of the Agreement, are included within the Guaranteed Maximum Price specified in Section 3.4.3.1 of the Agreement. Notwithstanding the breakdown or categorization of any costs to be reimbursed in this Article A.1 or elsewhere in the Contract Documents, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of reimbursable categories.

§ A.1.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Contractor shall obtain such approval in writing prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing this

Init.

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User Notes:

(860635718)

Agreement; however, any failure to identify such costs shall not relieve the Contractor of its obligation to obtain prior written approval.

*(Paragraph deleted)*

**§ A.1.1.3 Contractor's General Conditions Costs.** Owner and Contractor agree that those certain administrative and supervisory personnel costs, direct overhead, and other on-Site costs and expenses incurred by Contractor in the performance of its administrative, supervisory, and management responsibilities under the Contract described or categorized in Contractor's General Conditions Costs Schedule attached as **Exhibit A-1** shall, notwithstanding the other terms of this Article A.1 be reimbursable to the Contractor subject to the limitations and restrictions expressly set forth in such Schedule and in **Attachments A-1-1 and A-1-2** thereto. **Attachment A-1-1** provides wage/salary, benefits, and labor burden information for the specific personnel included in the administrative, supervisory and management roles in **Exhibit A-1**. Contractor's General Conditions Costs shall be based on the allowable General Conditions Cost categories provided in **Attachment A-1-2**. Notwithstanding anything to the contrary in the Contract Documents, (a) the Contractor shall not be entitled to an increase in the General Conditions Costs for any portion of the Work as a result of errors in the Contractor's assumptions or changes to the Contractor's means and methods of performing the Work; and (b) the total cost to the Owner for all General Conditions Costs for the Work shall in no event exceed the amount set forth on **Exhibit A-1**, unless such amount is increased by Change Order or the Owner in its sole discretion consents to use the Contingency therefor. The Contractor's General Conditions Costs shall be billed each month in an Application for Payment based on actual costs incurred for that month. General Conditions Costs shall not be duplicated in other non-General Conditions Cost categories.

**§ A.1.1.4.** Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

#### **§ A.1.2 Labor Costs**

**§ A.1.2.1** With the Owner's prior written approval, wages or salaries of construction workers directly employed by the Contractor to perform the construction of the Work at the Site or at off-Site workshops. Contractor shall, at all times comply with the requirements of prevailing wage rates/requirements of *Tex. Gov't. Code § 2258* and shall pay not less than the wage schedule in compliance with same.

**§ A.1.2.2** With the Owner's prior approval, wages or salaries of the Contractor's supervisory and administrative personnel assigned to the Project including but not limited to an estimator, scheduler(s), safety personnel, a Project manager, a Project administrator, superintendent(s) and operations managers, but only for that portion of the time required for the Project, all of whom shall be paid as part of Contractor's General Conditions Costs set forth in **Exhibit A-1** and **Attachment A-1-1**. Supervisory and administrative personnel providing only a portion of their time to the Project shall be frequently assessed and reviewed by the Contractor, Project Manager, and Owner to agree upon the time or percentage of time portioned to the Project.

*(Paragraphs deleted)*

**§ A.1.2.3** Wages or salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work on the Project, which shall be paid as Contractor's General Conditions Costs set forth in **Exhibit A-1** and **Attachment A-1-1**.

**§ A.1.2.4** Costs paid or incurred by the Contractor, as required by law or collective bargaining agreements, for employment taxes, insurance, contributions, assessments, and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions or other incentive compensation or benefits (but not discretionary or merit bonuses) included as part of Contractor's usual compensation package, provided such costs are based on wages and salaries included in the Cost of the Work under this Section A.1.2. Such costs are referred to as "Labor Burden" which are included in the rates established in **Attachment A-1-1** for each position as set forth therein.

**§ A.1.2.5** The stipulated labor costs provided in **Attachment A-1-1** of this Agreement shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

*(Paragraphs deleted)*

**§ A.1.2.6** Any labor rates and/or Labor Burden set forth in **Exhibits A-1** and **Attachment A-1-1** are fixed and final for the duration of the Project. Owner shall be entitled to verify the calculation of the fixed rate times the applicable multiplier. Owner agrees that the rates, multipliers and other fixed percentages and amounts applicable to insurance are subject to review and audit.

**§ A.1.3 Subcontract Costs**

Payments made by the Contractor to Subcontractors in accordance with the requirements of their subcontracts and this Agreement.

**§ A.1.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ A.1.4.1** Costs, including transportation and storage at the Site, of materials and equipment incorporated or to be incorporated in the completed construction.

**§ A.1.4.2** Costs of materials described in the preceding Section A.1.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

*(Paragraph deleted)*

**§ A.1.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ A.1.5.1** Costs of transportation, storage at the Site (subject to other provisions in the Contract regarding stored materials), installation, dismantling, maintenance, removal of materials, supplies, temporary utilities and consumption costs (including those for equipment start-up), temporary facilities, temporary bracing, support, or shoring, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the Site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Site less the value of the item when it is no longer used at the Site. Costs for items not fully consumed by the Contractor shall mean fair market value.

**§ A.1.5.1.1** Utility costs, which shall include all temporary hook-up and/or service charges, temporary power distribution and lighting system and equipment, and costs for coordination, installation, relocation, maintenance and removal of the temporary electrical service.

**§ A.1.5.2** Rental charges for facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the Site and costs of transportation, installation, minor repairs, dismantling and removal. For tools, machinery or construction equipment owned by and rented directly from the Contractor, the rental rate, including freight and delivery costs and all operating expenses except labor, shall be approved in advance by Owner and shall be in accordance with those established by (i) the "Contractor's Equipment Cost Guide," latest edition published by the Associated General Contractors of America, or (ii) the lowest of three (3) competitive bids obtained from equipment leasing companies that have been approved by the Owner before any commitments are made. Such rental costs shall in no event be charged at higher than competitive rental rates prevailing in the Dallas/Fort Worth metropolitan area for similar equipment. In no event shall the aggregate rental cost to Owner exceed the purchase price and maintenance cost of the item. No charge for idle machinery and equipment owned by Contractor shall be made by the Contractor during the period of any suspension or labor dispute. The total rental cost of any such equipment may not exceed the purchase price of any comparable item on the date that the equipment is first rented for the Project. The Contractor shall pay any excess rental charges.

**§ A.1.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal, which shall be paid as part of Contractor's General Conditions Costs as set forth in **Exhibit A-1**.

**§ A.1.5.4** Costs of the Contractor's Site office, including general office equipment and supplies such as document reproductions, internet service, dedicated data and communication services, teleconferences, Project websites, extranets, electronic communications, delivery charges, telephone service (including cellular service) at the Site and reasonable petty cash expenses of the Site office, which shall be paid as part of Contractor's General Conditions Costs as set forth in **Exhibit A-1**.

(Paragraph deleted)

§ A.1.5.5 Costs of materials and equipment suitably stored off the Site at a mutually acceptable location, subject to the Owner's prior approval.

§ A.1.5.6 Costs of ice, water containers, cups, fire extinguishers, first aid supplies, safety equipment, fall protection, final cleaning requirements, compliance with trench safety requirements, street and sidewalk expenses, off-Site storage space or facilities, and progress photos, which shall be paid as part of Contractor's General Conditions Costs set forth in **Exhibit A-1**.

§ A.1.5.7 All losses resulting from lost, damaged or stolen tools and equipment shall be the sole responsibility of the Contractor, and not the Owner. Costs of such losses shall not be reimbursable under this Agreement. However, this limitation is not intended to prevent the Contractor from recovering any such loss under the Builder's Risk Insurance furnished by Contractor with respect to the Project, to the extent such loss is recoverable thereunder.

§ A.1.5.8 With Owner's advance written approval, Contractor may procure long-lead time items or large quantities of materials to be incorporated into the Work for the purpose of taking advantage of lower prices or quantity purchase discounts, or addressing potential scheduling issues. Payment for such materials shall be made at the time the materials are incorporated into the Work pursuant to Section 4.1.8.1.3 of the Agreement or when stored off-Site, with Owner's approval. To the extent deposits or advances are required to secure the materials, Contractor shall identify the reason and the amount of such deposits and shall seek Owner's approval of same prior to ordering. Contractor shall comply with the requirements of Section 4.1.10 of the Agreement, store and secure such materials in a bonded warehouse and shall arrange and pay for, as a Cost of the Work, all shipping, storage and insurance costs for said materials.

#### § A.1.6 Miscellaneous Costs

##### § A.1.6.1 Insurance Premiums

§ A.1.6.1.1 Insurance Premiums and Deductibles. Owner will pay that portion of premiums for Contractor's payment and performance bonds required pursuant to *Tex. Gov't. Code § 2253* and insurance required by this Agreement and specified in **Exhibit B**, that are attributable to this Project. Contractor's premium for Builder's Risk Insurance shall be charged as a Cost of the Work based on Guaranteed Maximum Price and Contract Time. Insurance deductibles and premiums for Subcontractor bonds or Subcontractor default insurance are NOT reimbursable as a General Conditions Cost or Cost of the Work.

§ A.1.6.1.2 No charges for self-insurance will be considered as a reimbursable cost under the terms of this Agreement unless the arrangements for self-insurance are first disclosed in writing to Owner and approved by Owner along with a proposed methodology for determining a fair and equitable portion of the actual cost of the self-insurance out-of-pocket costs incurred to settle claims related to Work performed in this Project. In no event shall the charges for self-insurance costs exceed the comparable costs of purchasing conventional insurance at conventional net or modified rates of similar volumes of Work performed under similar conditions.

§ A.1.6.2 Sales, use or similar taxes imposed by Authorities Having Jurisdiction, that are related to the Work and for which the Contractor is liable, except to the extent the Owner is exempt under *Tex. Admin. Code § 3.291*, the *Texas Tax Code Ch. 151*, and/or the Internal Revenue Code.

§ A.1.6.3 Fees and assessments for any building permits, licenses, and inspections, including, but not limited to construction-related permits and approvals and expediting of such permits and approvals, including those related to, demolition, sidewalk and/or street closings, traffic control, sidewalk crossing, building and Certificates of Occupancy (permanent and temporary), Certificates of Compliance (permanent and temporary), and any other construction-related permit.

§ A.1.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Article 18 of the Agreement or by other provisions of the Contract Documents, and which do not fall within the scope of Section A.1.7.3.

§ A.1.6.5 Royalties and license fees paid for the use of a particular design, process, or product required by the Contract Documents.

##### § A.1.6.5.1 [Intentionally Deleted.]

Init.

§ A.1.6.6 As set forth in **Exhibit A-1**, costs for communications services, electronic equipment, and software, directly related to the Work, located at the Site or used in furtherance of the Work, with the Owner's prior approval.

§ A.1.6.7 *[Intentionally Deleted.]*

§ A.1.6.8 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ A.1.6.9 *[Intentionally Deleted.]*

§ A.1.6.10 With the Owner's prior approval, expenses incurred in accordance with the Contractor's standard written personnel policy for relocation, and temporary living allowances, of the Contractor's personnel required for the Work.

§ A.1.6.11 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in accordance with Owner's travel policy, and in discharge of duties connected with the Work. Such expenses incurred by employees of the Contractor not permanently stationed at the field office must be approved in advance by the Owner. Commuting expenses are specifically not reimbursable.

*(Paragraph deleted)*

§ A.1.6.12 Costs incurred for performing surveying, field engineering and layout services required by the Contract Documents.

§ A.1.6.13 Costs relating to personnel, such as employee credentialing and identification materials, costs of the safety program, temporary barriers, signage and controls.

#### § A.1.7 Other Costs and Emergencies

§ A.1.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.1.7.2 Reasonable costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, provided that the emergency is not caused by the negligence or failure to fulfill a specific responsibility by the Contractor to the Owner as set forth in the Contract Documents or the failure of the Contractor's personnel to supervise adequately the Work of the Subcontractor-.

§ A.1.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors, or suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable; provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Contractor, and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

*(Paragraph deleted)*

#### § A.1.8 Related Party Transactions

§ A.1.8.1 For purposes of this Section A.1.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with the Contractor; (2) any entity in which any stockholder in, or management employee of, the Contractor holds any equity interest in excess of ten percent (10%) in the aggregate; (3) any entity which has the right to control the business or affairs of the Contractor; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Contractor.

§ A.1.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article A.4 and Article 11 of the Agreement. If the Owner

fails to authorize the transaction in writing, the Contractor shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article A.4.

## **ARTICLE A.2 COSTS NOT TO BE REIMBURSED**

**§ A.2.1** The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section A.1.2.2;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor;
- .3 Expenses of the Contractor's principal office and offices other than the site office except as to Project-related services such as scheduling, estimating or accounting and then only for such time or in such amount as relates to the Project and only as authorized in Section A.1.2.2;
- .4 Overhead and general expenses, except as may be expressly included in Article A.1;
- .5 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .6 Except as provided in Section A.1.7.3, costs due to the negligence, lack of care, or failure of the Contractor, Subcontractors, and/or suppliers (or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable) to fulfill a specific responsibility of or comply with the Contract Documents, to coordinate its Work with Owner's Separate Contractors or to fulfill a specific responsibility of the Agreement, or costs for the correction of damaged, defective or non-conforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, costs for any re-tests or re-inspections required, and costs incurred in making good damage to property not forming part of the Work;
- .7 Any cost not specifically and expressly described in Article A.1;
- .8 Costs, other than costs included in Change Orders or Owner Change Directives as approved by the Owner that would cause the Guaranteed Maximum Price to be exceeded;
- .9 Costs and expenses arising from Contractor's indemnity obligations, including Contractor's costs and expenses in removing or defending against a mechanic's lien claim asserted against the Owner or its property, unless such mechanic's lien arises from Owner's wrongful failure to make timely payments.;
- .10 Rental costs of machinery and equipment, except as specifically provide in Section A.1.5.;
- .11 Costs to repair defective Work and other costs to comply with Contractor's warranty obligations under the Contract, except as may be expressly included in Section A.1.7.3;
- .12 Except as provided in Section A.1.6.1.1 of this Agreement, premiums, losses and expenses for or related to (i) Contractor's insurance program, (ii) Subcontractor default insurance, (iii) Subcontractor payment and performance bonds not approved by Owner, and (iv) items not covered by insurance because Contractor chose not to submit the claim to an insurer. Insurance deductibles under insurance policies secured for the Project are not reimbursable and will not be paid as a Cost of the Work;
- .13 Overtime wages or salaries (and fringe benefits related thereto) incurred by the Contractor as a result of the Contractor's unexcused failure to perform the Work in accordance with the Project Schedule, unless the Contractor has received the Owner's prior consent to incur such overtime;
- .14 Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of Contractor or its Subcontractors or any tier;
- .15 Costs incurred by Contractor resulting from the failure of Contractor or its Subcontractors to coordinate their Work with that of Owner and its Separate Contractors, if any, after agreeing to the schedules therefor, or failure of Contractor to comply with directives of Owner not in conflict with said schedules;
- .16 Any cost or portion thereof that duplicates in whole or in part any other cost or portion thereof that has been charged to or has been paid separately by Owner;
- .17 Sales and use taxes from which Owner is exempt under *Tex. Admin. Code* § 3.291, *Tex. Tax Code* Ch. 151, and/or the Internal Revenue Code.

## **ARTICLE A.3 DISCOUNTS, REBATES AND REFUNDS**

**§ A.3.1** Cash discounts obtained on payments made by the Contractor shall accrue to the Owner. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained. The Contractor shall not obtain for its own benefit any discounts, rebates or refunds in connection with the Work prior to providing the Owner with seven (7) Days prior notice of the potential discount, rebate or refund so that the Owner can take advantage of it in accordance with the requirements of this Section A.3.1.

§ A.3.2 Amounts that accrue to the Owner in accordance with Section A.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.3.3 Contractor shall make reasonable efforts to provide Owner with timely notice of all available discounts, rebates, refunds and returns (hereinafter referred to collectively as "discounts"). The Contractor shall not obtain for its own benefit any discounts in connection with the Work prior to providing the Owner with reasonable, prior notice of the potential discount and an opportunity to furnish funds necessary to obtain such discount on behalf of the Owner in accordance with the requirements of this Section A.3.

#### **ARTICLE A.4 SUBCONTRACTS AND OTHER AGREEMENTS**

§ A.4.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Contractor shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. Contractor shall not retain any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom Owner shall have reasonable objection. Contractor shall not substitute Subcontractors without the acceptance of Owner. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ A.4.2 When a specific Subcontractor or supplier (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.4.3 Subcontracts or other agreements shall be consistent with and bind the Subcontractors to the terms and conditions of the Contract Documents and shall conform to the applicable payment provisions of this Agreement. No trade work shall be performed by Contractor, or any entity related to or affiliated with Contractor, without Contractor first submitting a bid for such self-performed Work and receipt of Owner's written authorization to proceed. If a Subcontract is awarded on a cost-plus a fee basis, the Contractor shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article A.5. Contractor shall furnish to Owner a copy, at Owner's request, of each first-tier subcontract promptly after its execution. Contractor agrees that Owner has no obligation to review or approve the content of such contracts and that providing Owner such copies in no way relieves Contractor of any of the terms and conditions of the Contract, including, without limitation, any provisions of the Contract which require the Subcontractor to be bound to Contractor in the same manner in which Contractor is bound to Owner.

§ A.4.4 Contractor shall include in each subcontract a provision permitting Contractor to assign to Owner each subcontract upon termination of this Agreement. Upon such termination, Contractor agrees, upon Owner's written request, to execute an assignment of any or all subcontracts to Owner. Each subcontract shall contain a provision that upon assignment of each subcontract to Owner, Subcontractor shall assume toward the Owner all of the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Owner.

§ A.4.5 Value engineering or cost saving alternative proposals contained in any Contractor or Subcontractor bids must be set forth as alternates to bid required by Drawings or Specifications. Contractor shall consult with Owner before awarding any alternates to Subcontractors and shall provide Owner with a copy of each proposed alternate for Owner's review and acceptance. The term "value engineering" used in conjunction with this Agreement or the Project or the Work has its commonly accepted meaning within the construction industry and does not imply the practice of architecture or engineering with or without a license.

#### **ARTICLE A.5 ACCOUNTING RECORDS**

§ A.5.1 The Contractor shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit



and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, Drawings, receipts, Applications for Payment, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, invoices, memoranda, and other data relating to this Contract and the Work hereunder, including but not limited to all records and back-up documentation relating to reimbursable expenses and Cost of Work items. Contractor shall preserve these records for a period of **five (5)** years after final payment, or for such longer period as may be required by

*(Paragraphs deleted)*

Applicable Law.



**EXHIBIT A-1**  
**CONTRACTOR'S GENERAL CONDITIONS COSTS**

**[See Attached]**

**ATTACHMENT A-1-1**  
**CONTRACTOR'S LABOR RATES AND LABOR BURDEN**

**[ATTACHED]**

## ATTACHMENT A-1-2

### CONTRACTOR'S GENERAL CONDITIONS COST TEMPLATE

Note: Contractor will be required to populate the second column of this chart for cost amounts, as part of the Contract requirements.

<b><u>General Conditions Cost Categories</u></b>	<b><u>Amount</u></b>
<b>On-Site Project Management Staff:</b>	
Project Executive/Director	
Sr. Project Manager(s)	
Project Manager(s)	
<b>Project Support Staff:</b>	
Accountant(s)	
Estimator(s)	
Expeditor(s)	
Loss Prevention Coordinator(s)	
Quality Control Engineer(s)/Coordinator(s)	
Scheduler(s)	
<b>Diversity Program Manager/Coordinator</b>	
<b>Superintendent(s)</b>	
<b>Assistant Superintendent(s)</b>	
<b>Safety Manager/Coordinator/Assistant(s)</b>	
<b>Bonds and Insurance:</b>	
Builder's Risk Insurance	
General Liability Insurance (unless OCIP)	
Payment and Performance Bonds	
Other Project Insurance as Required by the Agreement	
<b>Temporary Project Utilities:</b>	
Dumpsters	
Fencing and Covered Walkways	
Monthly Telephone/Internet Service	
Project Electricity	
Project Entrance(s)	
Project Water	
Site Erosion Control (BMP)	
Street Rental and Barricades	
Temporary Toilets	
Telephone/Internet System Installation	
Temporary Fire Protection	
Trash Removal/Cleanup	
Temp Water Distribution and Meters Temp	
Electrical Distribution and Meters	
<b>Field Offices and Office Supplies:</b>	
AGC Fees	

Drinking Water and Accessories	
Employee Identification System	
First Aid Supplies	
Job Photos/Videos	
Mobilization and Demobilization (Equipment Only)	
Monthly Office Supplies	
Monthly Office Trailer Rental Costs	
Move-In/Out and Office Setup	
Office Clean-Up/Janitorial Services	
Project Specific Signage	
Postage/Special Shipping	
Project/As-Built Drawings	
Partnering Costs*	
Project Reference Manuals	
Project Milestone Event(s)*	
Security System/Watchman	
Radios	
Remote Parking Expenses*	
Reproduction Services	
Safety Material and Equipment	
Storage Trailers	
Copier Rental	
Mobile Phones	

\*Contractor shall submit specific justification and all estimated costs to Owner for approval prior to incurring any such costs.

Items that the Contractor intends to keep after the completion of the Project shall not be included in the General Conditions. Examples include, but are not limited to, company computers, laptops, projectors, iPads, printers, and furniture.

## EXHIBIT B

### CONTRACTOR'S INSURANCE AND BONDING REQUIREMENTS

#### A. INSURANCE REQUIREMENTS

Contractor shall purchase, maintain, and keep in full force and effect, and shall require its Subcontractors to purchase, maintain and keep in full force and effect at all times during the term of this Agreement such lines of insurance coverage with policy limits set forth in this **Exhibit B**. Each policy shall be written with limits not less than those set forth this **Exhibit B** Contractor will comply and will require its Subcontractors comply fully with all requirements of this **Exhibit B** prior to the commencement of any Work for the Project. "Owner," "Indemnatee," "Indemnitees," "Contractor," and "Subcontractor" shall each have the meanings set forth in the Agreement.

1. **Required Coverages.** Contractor will obtain the following policies with the policy limits as indicated and shall require its Subcontractors to provide the policies with limits as indicated below:

Insurance Policy	Contractor	Subcontractors
<b>Worker's Compensation</b>	Statutory	Statutory
<b>Employer's Liability Insurance:</b>		
Bodily Injury by Accident (accident)	\$1,000,000	\$1,000,000
Bodily Injury by Disease (policy limit)	\$1,000,000	\$1,000,000
Bodily Injury by Disease (each employee)	\$1,000,000	\$1,000,000
<b>Commercial General Liability</b>	\$1,000,000 each occurrence \$2,000,000 annual general aggregate \$2,000,000 products-completed operations aggregate	\$1,000,000 each occurrence \$2,000,000 annual general aggregate \$2,000,000 products-completed operations aggregate
<b>Automobile Liability*</b>	\$1,000,000 each accident	\$1,000,000 each accident
*coverage must include loading and unloading hazards		
<b>Umbrella/Excess Liability</b>	\$5,000,000 each occurrence \$5,000,000 aggregate	\$2,000,000 each occurrence \$2,000,000 aggregate
<b>Pollution Liability</b>	\$500,000 each occurrence \$750,000 aggregate	\$500,000 each occurrence \$750,000 aggregate
<b>Professional Liability</b>	\$500,000 each claim \$500,000 annual aggregate	\$500,000 each claim \$500,000 annual aggregate
<b>Builder's Risk (including Installation Floater)</b>	100% of GMP on a replacement cost basis	

2. **Worker's Compensation/Employer's Liability.** Worker's Compensation insurance coverage must be provided for all workers at all tier levels and shall meet the statutory requirements of *Tex. Labor Code §401.011(44)* and, specific to construction projects for public entities, as required under *Tex. Labor Code §406.096*. Employer's Liability insurance must be provided as required in the chart above. In addition:

- .1 ***Certifications.*** Contractor hereby certifies, pursuant to *Tex. Labor Code §406.096(a)*, that Contractor provides or will provide at, or prior to, execution of the Agreement, workers' compensation and employers' liability insurance for employees employed on this public project with limits as indicated above. Pursuant to *Tex. Labor Code § 406.096(b)*, Contractor shall require each Subcontractor to certify in writing to the Contractor that said Subcontractor provides workers' compensation and employers' liability insurance for all of Subcontractor's employees employed on this public project. Contractor shall forward said certifications to Owner within **ten (10)** days of the Effective Date of the Agreement.
- .2 ***Endorsements.*** This policy must include an Other States Endorsement to include the Owner and Tarrant County, Texas if Contractor's business is domiciled outside the State of Texas. The policy will be endorsed to name Owner as the alternate employer.
- .3 All policies shall be endorsed to include Waiver of Subrogation in favor of Owner and all Indemnitees.
- .4 Workers' Compensation Insurance Coverage.

A. Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the division, or a coverage agreement (DWC Form-81, DWC Form-82, DWC Form-83, or DWC Form-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, Consultants, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all

employees of the Contractor providing services on the project, for the duration of the project.

- C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- E. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
  - (1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
  - (2) no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- G. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Division of Workers' Compensation informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:
  - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
  - (2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;



- (3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (4) obtain from each other person with whom it contracts, and provide to the Contractor:
    - (a) a certificate of coverage, prior to the other person beginning work on the project; and
    - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
  - (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
  - (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the division. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

3. **Commercial General Liability.** Commercial General Liability coverage ("CGL") shall be provided by Contractor and all Subcontractors with the policy limits set forth in the chart above. Coverage shall be provided on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage). The CGL insurance general aggregate limit shall apply separately to this Project and Contractor and Subcontractors shall provide evidence of same through ISO Endorsement CG 25 03 05 09. The policy shall include endorsement CG2503, Amendment of Aggregate Limits of Insurance (per Project), or its equivalent. CGL insurance shall cover liability including, but not limited to, liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury,

electronic data liability (under endorsement ISO CG 04 37), property damage, and personal injury and death resulting therefrom. This policy shall provide for full separation of insureds and shall **not** include any insured v. insured exclusions or limitations. The following is a non-exclusive list of additional prohibited exclusions and limiting endorsements:

- Liability assumed by Contractor/Subcontractor under a written agreement, including any contractual liability limitation endorsement restricting coverage to only liability that would exist in the absence of a contract, such as the ISO CG 21 39 or its equivalent, or any amendment of insured contract definition endorsement such as the ISO CG 24 26 or its equivalent.
- Explosion, collapse, underground property damage, blasting, blowouts, cratering, or the like, including any Explosion, Collapse and Underground Property Damage Hazard endorsement such as the ISO CG 21 42 or ISO CG 21 43 endorsements, or their equivalent.
- Cross-liability on claims between any insureds, other than claims between named insureds.
- Injury to independent contractors and employees of independent contractors.
- Any exclusion relating to damage to work performed by Subcontractors on behalf of Contractor (or Sub-subcontractors on behalf of Subcontractor) such as the ISO CG 22 94 or ISO CG 22 95, or their equivalent.
- Any type of classification or business description limitation endorsement.
- Any type of endorsement excluding coverage for construction defects in the completed operations phase.
- Any type of endorsement modifying the employer's liability exclusion.
- Any type of habitation or residential exclusion.
- Any type of punitive, exemplary or multiplied damages exclusion.
- Any type of subsidence exclusion if Contractor or any Subcontractor is engaged in any type of earth movement work, including but not limited to soil compaction, fill, or installation of storm or sewer drains.

Owner reserves the right to notify Contractor of any additional prohibited exclusions or endorsements in advance of placing the insurance. A copy of the CGL Schedule of Forms and Endorsement page(s) of the policy shall be provided to verify the coverages required, that the Endorsements required by these insurance requirements are included, and that none of the prohibited exclusions exist in the policy. Owner may require additional exclusions be removed. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs maintained by Owner. CGL insurance must be kept in force at all times during the course of this Agreement and until all claims arising out of the Work are barred by the statute of repose provided under Texas law.

**4. Automobile Liability Insurance.** Automobile liability insurance policies shall be provided by Contractor and all Subcontractors with policy limits as stated in Paragraph 1 above. This policy shall cover liability arising out of any auto (including owned, hired, and non-owned autos) used in connection with the

## **EXHIBIT B -- CONTRACTOR'S INSURANCE AND BONDING REQUIREMENTS**

Work on the Project and shall include coverage for loading and unloading hazards. Automobile liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01. No aggregate shall be permitted.

5. **Umbrella/Excess Liability Insurance.** An Excess or Umbrella liability insurance policy shall be provided by Contractor and all Subcontractors with policy limits as indicated in Paragraph 1. This policy shall be excess of the CGL, automobile liability, and employer's liability insurance on a "following form" basis of underlying policies. This policy shall be excess over and be no less broad than the CGL, Automobile Liability, Employer's Liability as described in these insurance requirements, including but not limited to the required additional insured status, designated project(s) and/or location(s), general aggregate, waiver of subrogation, notice of cancellation, and prohibited exclusions or limitations. The policy shall provide coverage where underlying primary insurance coverage limits are exhausted or otherwise unavailable or inadequate to cover a loss. Any excess or umbrella policy shall be kept in force at all times during the course of this Agreement and until all claims arising out of the Work are barred by the statute of repose provided under Texas law.

6. **Reserved.**

7. **Reserved.**

8. **Pollution Liability Coverage.** Contractor and each Subcontractor will provide a pollution liability policy with limits as stated in Paragraph 1 above that covers a pollution event or release on the Project resulting from the Contractor's or any Subcontractor's activities under and during the term of this Agreement and for completed operations. The Pollution Liability policy shall provide coverage for "sudden & accidental" and gradual occurrences arising from the Work performed under this Agreement. The annual aggregate shall apply separately to this Project. Pollution liability insurance with coverage as specified herein shall be maintained until all claims arising out of the Work are barred by applicable statutes of limitation and repose.

Purchase of an extended discovery period or an extended reporting period will not be sufficient to comply with Contractor's or Subcontractors' obligations hereunder. This policy shall include coverage for: (i) the full scope of the Contractor's and Subcontractors' operations (on-going and completed), as described in this Agreement or in any subcontract or separate agreement concerning the Project; (ii) losses arising from pollutants, including but not limited to fungus, bacteria, biological substances, mold, microbial matter, asbestos, lead, silica and contaminated drywall; (iii) third party liability for bodily injury, property damage, clean up expenses, and defense costs arising from the Contractor's/Subcontractors' operations; (iv) diminution of value and natural resources damages; (v) contractual liability; (vi) claims arising from Contractor's/Subcontractors' use of any owned or non-owned disposal sites arising out of Contractor's and Subcontractors' activities in connection with this Agreement; (vii) bodily injury to include physical injury, sickness, disease, death, mental anguish, medical monitoring and emotional distress sustained by any person; and (viii) all attorneys' fees, expenses and other costs that are related to or that arise out of or from the investigation or adjustment of any claim or in connection with any court, arbitration, mediation, state administrative hearing, or other proceeding of any kind that arise out of or that are related to a Pollution Condition(s). Coverage under this policy shall include a seven (7)-Day minimum occurrence period for emergency response costs. The Pollution Liability insurance policy shall not include any type of exclusion or limitation of coverage applicable to claims arising from any of the following:

- Insured vs. insured actions (however, an exclusion for claims made between insureds within the same economic family is acceptable).

- Impaired property that has not been physically injured.
- Materials supplied or handled by the named insured; any exclusionary language pertaining to materials supplied by the insured is subject to the Owner's review and approval.
- Property damage to the work performed by Contractor or any Subcontractor.
- Faulty workmanship as it relates to clean up costs.
- Punitive, exemplary or multiplied damages.
- Work performed by subcontractors of any tier.
- Contractual liability incurred as a result of an injury to an employee of the insured.

"Pollution Condition(s)" means the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, sewage, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, mold, silt, sedimentation, low-level radioactive material and waste materials into or upon land, the atmosphere or any watercourse or body of water, including groundwater, provided such conditions are not naturally present in the environment in the amounts or concentrations discovered.

**9. Professional Liability Coverage.** Contractor and Subcontractors will provide Professional liability coverage ("PL") with policy limits set forth in Paragraph 1 above as will insure from and against all negligent acts, errors, and omissions in the professional services performed by Contractor, its agents, representatives, employees, and Subcontractors and, as to Subcontractors, their lower tier subcontractors. PL coverage shall provide full prior acts coverage or a retroactive date not later than the date the services are first performed by or for Contractor (or Subcontractor) in connection with the Project. This policy shall not include any type of exclusion or limitation of coverage applicable to claims arising from: (i) bodily injury or property damage where coverage is provided on behalf of design professionals or Subcontractors; (ii) habitational or residential operations; (iii) pollution, mold and/or microbial matter and/or fungus and/or biological substance; (iv) punitive, exemplary or multiplied damages; (v) professional liability of the Contractor arising out of the negligence of Contractor; or (vi) design/build services. This insurance shall be maintained until all claims arising out of the Work are barred by applicable statutes of limitation and repose.

**10. Builder's Risk Coverage.** Builder's Risk coverage shall be purchased by the Contractor for the entire Project on an "all risk" completed value form at 100% of the GMP with coverage automatically increasing to provide constant limits of insurance at full 100% of all insurable values as they are created during construction and to cover the amount of any Change Orders, Owner Change Directives, or Modifications that increase the replacement value of the Project. Coverage shall be at least as broad as an unmodified ISO Special Causes of Loss Form ISO CP 10 30 06 95 and shall include coverage for fire, extended coverage, vandalism and malicious mischief, theft, collapse, flood and earth movement, and named storm. Any exclusions to this Builder's Risk coverage form require Owner approval. Such insurance shall (a) designate the Owner and Indemnitees, Contractor, all Subcontractors of any tier (as their interests appear), and all loss payees and mortgagees (as their interests appear), as insureds on the policy and Owner and Indemnitees as loss payees; and (b) be primary and non-contributing to any other insurance coverage available to the insureds, as to whom their other insurance shall be excess, secondary and noncontributing to losses covered by Builder's Risk insurance. The Builder's Risk insurance shall not include any requirement that protective safeguards are in-place or maintained on the Project. The termination of coverage provision shall be endorsed to permit coverage to continue during any interim

period of occupancy of the covered property while being constructed. This insurance shall be maintained in effect until the earlier of the following dates: (i) the date on which termination of coverage has been approved after Final Payment has been issued to and accepted by the Contractor, as provided for in the Contract Documents; or (ii) the date on which the insurable interests in the covered property of all insureds other than the Owner have ceased. Loss, if any, shall be adjusted with and made payable to Owner as trustee for the insureds. Such insurance shall cover at a minimum the following:

- All structure(s) under construction, including retaining walls, paved surfaces and roadways, bridges, glass, foundation(s), footings, underground pipes and wiring, excavations, grading, backfilling or filling.
  - All temporary structures (e.g., fencing, scaffolding, cribbing, false work, forms, site lighting, temporary utilities and buildings) located at the site.
  - All property including materials and supplies on site for installation and at other locations but intended for use at the site.
  - All property including materials and supplies in transit to the site for installation by all means of transportation other than ocean transit.
  - The cost of debris removal equal to the lesser of: (i) 25% of the amount of loss, or (ii) \$5,000,000 per occurrence.
  - Other property for which an insured is liable in connection with the Project, including Owner furnished or assigned property.
- .1 For renovation projects or projects that involve portions of Work contained within an existing structure, the policy must also include coverage in the additional sum of \$1,000,000.00, or the value of the total Contract Sum, whichever is less. These policy limits are in addition to the Builder's Risk policy limit that is equal to the total Contract Sum for Existing Property and Owner-Furnished Items, if any, specified by Owner. For purposes herein, "Existing Property" means existing buildings or structures, as well as, all personal property contained therein, but does not include personal property owned or operated by Contractor or any Subcontractors.
  - .2 For Owner-Furnished Items or materials that will be in care, custody or control of Contractor, Contractor shall be responsible for any and all damages and losses thereto.
  - .3 **Sublimits.** For those properties located within a Tier 1 or 2 windstorm area, named storm coverage must be provided with limits as specified by Owner. For those properties in flood prone areas, floor insurance coverage must be provided with limits specified by Owner. Owner may specify additional sublimits applicable to the Project in the Special Terms and Conditions.
  - .4 The policy shall include the following endorsements:
    - i. Builder's Risk insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property;

- ii. The policy shall not contain an occupancy clause suspending or reducing coverage should Owner partially occupy the Project site and before the parties have determined Substantial Completion; and
- iii. Valuation of any loss for the renovation and any existing property (exclusive of building and existing structures) shall be at replacement cost.

.5 **Deductibles.** Deductibles shall not exceed the following:

- i. All risks of direct damage, \$25,000 per occurrence.
- ii. Delayed Opening Waiting Period: 5 Days.
- iii. Earthquake and Earthquake Sprinkler Leakage, \$100,000 per occurrence.
- iv. Flood. The deductible per occurrence shall be 5% of the value-at-risk-at-time-of-loss ("VARTOL") with a minimum VARTOL of \$250,000. If flood insurance is purchased through National Flood Insurance Program, the deductible shall be the maximum amount of insurance purchased thereunder.

.6 The Builder's Risk policy shall remain in effect until the time Owner has approved the transfer of the risk of loss from the Project.

.7 Additional requirements may be specified by Owner.

**11. Insurance Required of Subcontractors.** Each Subcontractor must provide all coverages identified above with limits as set forth in Paragraph 1 above. The limits of such insurance may be adjusted in accordance with the nature of each Subcontractor's operations but, if such adjustment is requested, it must be submitted to Owner for approval before the Subcontractor enters into an agreement or any Work commences under the agreement in question.

**12. Inclusion of Insurance Information in Bid Packages.** Contractor shall include required insurance information in trade bid/proposal packages and indicate on bid/proposal forms the insurance that bidders/proposers are to include in their responses. The Contractor shall not commence any phase of the Work under this Agreement until it has obtained all insurance required for that phase and until evidence of the required insurance has been reviewed and approved by the Owner. Owner's review and approval of the insurance shall not affect the liability of either party.

**13. General Terms for All Insurance Policies (including those Subcontractors).** All insurance coverages must be placed with carriers acceptable to Owner, licensed to do business in Texas and rated A-/VII or better by A.M. Best, confirmed by one or more insurance certificates on an Acord 25 form, with all information fully provided as required by the form. All insurance coverages shall be written on an occurrence basis (except Professional Liability) and shall be primary and not excess insurance vis-à-vis any coverage, any self-insurance, or other policy of insurance maintained by Owner. Any coverage underwritten on a claims-made basis must include a retroactive date for the policy and all renewals must be coincident with the effective date of the Agreement. Any premiums for this extended reporting period shall be paid by Contractor. Certificates of insurance and additional insured endorsements required herein shall provide that the policies shall be primary without right of contribution from any insurance carried by Owner. Each policy, other than Worker's Compensation/Employer's Liability and Professional Liability, shall contain a severability of interest clause stating *"it is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits*

*of the company's liability.*" Each policy shall provide for full separation of insureds and include no insured v. insured limitations or exclusions.

**14. Additional Insured Status.** Owner and Indemnitees (as defined in the Agreement) and their officers, directors, agents, and employees shall be included as additional insureds on policies procured by Contractor and its Subcontractors, except Worker's Compensation and Professional Liability, using ISO Additional Insured Endorsements CG 20 10 10 01 (ongoing operations) and CG 20 37 10 01 (Completed Operations) or their equivalent, as approved by Owner. Insured requirements for the Builder's Risk coverage are contained in Paragraph 10 above wherein Owner and the Indemnitees shall be listed as insureds. Contractor shall provide additional insured endorsements demonstrating the additional insured status of Owner and the Indemnitees as provided herein on such forms as required by Owner.

**15. Waivers of Subrogation.** All Worker's Compensation, Employers' Liability, Automobile Liability, CGL, Excess Liability, Builder's Risk, and Pollution Liability insurance policies (including those procured by Subcontractors) must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against Owner and Indemnitees and their officers, directors, agents, and employees. With respect to all such policies, Contractor waives any and all rights of recovery or subrogation against Owner and its Indemnitees and their officers, directors, agents, and employees.

**16. Evidence/Proof of Insurance/Endorsements.** Evidence of the insurance coverage required of Contractor and Subcontractors must be furnished to Owner before commencement of the Work (or, with respect to Subcontractors, before such Subcontractor begins its portion of the Work) and as coverage renews. Evidence of coverages shall be provided in certificates of insurance with a copy of the Commercial General Liability policies and all endorsements. The insurance policies shall provide or be endorsed to include a requirement for each insurer to give Owner notice at least thirty (30) Days prior to any (i) non-renewal; (ii) cancellation; or (iii) material change. "Material Change" includes, without limitation (i) a change in the policy period; (ii) a material revision to, or removal of, a coverage section; (iii) a reduction of the amount of limits of insurance, provided such reduction is not the result of payment of damages, medical expenses, or claim expenses; or (iv) an increase of the amount of any self-insured retentions. Similarly, the Commercial General Liability policy shall be endorsed to include a 10-Day Notice of Non-Payment of Premium in favor of Owner.

**17. Notification to Owner.** Any and all policies, endorsements, approvals, certificates of insurance and/or notifications of cancellation, non-renewal, or material change shall be transmitted to:

**Jill Farrell**  
**JPS Health Network**  
1500 South Main Street  
Fort Worth, Texas 76104  
Telephone: 817-702-9998  
Email: [jill.farrell@jpshealth.org](mailto:jill.farrell@jpshealth.org)

with a copy to:

**Daphne Walker**  
**Sr. Vice President, Chief Legal Counsel**  
1500 South Main Street  
Fort Worth, Texas 76104  
Telephone: 817-702-9988  
Email: [DWalker10@jpshealth.org](mailto:DWalker10@jpshealth.org)

**18. Deductibles, Retentions & Exclusions.** Insurance deductibles shall be paid by Contractor without reimbursement by Owner. Any under-insurance, self-insurance, self-insured retentions (SIR), deductibles, and exclusions in coverage in the insurance policies required under this agreement to the extent applicable, shall be assumed by, for the account of and at the sole risk of Contractor and Subcontractors. All deductibles and self-insured retentions shall be disclosed to Owner before the placement of any insurance or commencement of the Work under the Agreement.

**19.** If Contractor elects to self-insure or to maintain insurance required herein subject to deductibles and/or retentions exceeding the foregoing deductible amounts, Contractor shall be obligated to grant Owner all rights against Contractor to the same extent as if Contractor had maintained the insurance required hereunder with a commercial insurer, including but not limited to additional insured status (as to liability policies other than Workers' Compensation Insurance and Professional Liability Insurance), primary and non-contributory liability, waivers of rights of recovery, other insurance clauses, and any other extensions of coverage required herein. Contractor shall pay from its assets the costs, expenses, damages, claims, losses and liabilities, including attorney's fees and necessary litigation expenses at least to the same extent all of the foregoing would have been covered had Contractor maintained the insurance required hereunder with a commercial insurer.

**20. Contractor's Duty to Review.** Contractor represents and acknowledges it has carefully reviewed its insurance program with its legal and risk advisors and believes its insurance policies comply with the insurance requirements in this Agreement, and further acknowledges a continuing obligation to ensure its insurance policies remain compliant herewith. Within 48 hours of a written request by Owner, Contractor shall submit true and complete copies of Contractor's policies of insurance in electronic form by emailing true and complete of such policies to Owner's insurance analyst. The true and complete copies of all applicable insurance policies shall be submitted in a timely manner, as no contract will be executed without the receipt, review, negotiation, and Owner acceptance, of the submitted policies. The policies shall include therewith a letter provided by Contractor's broker, agent, or its applicable insurance carrier representative for each policy, certifying that the electronic copies of the policies as furnished are true and correct copies. In addition, upon conducting such review, if Owner's insurance analyst determines Contractor's insurance policies contain deficiencies that cause such policies to fail to comply with the insurance requirements of this Agreement, Contractor agrees to reimburse Owner for all costs and fees incurred in attempting to resolve such policy deficiencies by modification or special endorsement thereof. Contractor shall not cause or permit any required insurance to cancel or lapse prior to the expiration of all warranty periods, provided however, policy duration for Builder's Risk (or as applicable, an installation floater) is not governed by this provision. Contractor must update all expired policies prior to submission of any pay application.

**21. Right to Review.** Owner reserves the right to review all insurance requirements and to require deletion, revision, and/or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulations that are binding upon Owner, Contractor, or the underwriter) on any such policies when deemed necessary and prudent by Owner based upon changes in statutory law, court decisions, or the claims history of the industry and/or of Contractor, provided however, such modifications must be commercially available to Contractor. Owner shall make an equitable adjustment to the GMP for any additional cost resulting therefrom.

**22. Failure to Obtain or Maintain.** Failure to timely obtain and maintain the insurance coverages as required under this Agreement may subject Contractor to disqualification from eligibility to participate in any other or future projects with Owner and/or suspension or termination of Work for cause pursuant to the Contract Documents. Contractor shall provide Owner thirty (30) Days' written notice of erosion of any aggregate limits below the minimum amounts required by this Agreement. In the event Contractor fails to timely renew or pay any of the renewal premiums for any expiring policies, Owner shall have the right (but not the obligation) to: (i) make such payments; and/or (ii) acquire replacement coverage, and set off the



amount(s) or costs thereof against the next payment(s) coming due to Contractor under this Agreement or under any other contract between Owner and Contractor. Owner may withhold any payments due to Contractor from this Project or any other Owner project until satisfaction is achieved.

**23. Enforceability of Requirements.** None of the requirements contained herein as to types, limits, or Owner's approval of insurance coverage to be maintained by Contractor or any Subcontractors is intended to and shall not in any manner limit, qualify, or quantify the liabilities and obligations assumed by Contractor under the Agreement or otherwise provided by law. All insurance coverages required by the Agreement, as amended by Owner, shall be written in strict conformance with these requirements to provide complete and full coverage to Owner for Contractor's and Subcontractors' operations and completed operations. If coverages and/or specified endorsements are not available due to a change in Texas law, Contractor shall secure equivalent coverages, which shall be subject to approval by Owner. To the extent any provision of these insurance requirements is held to be void, voidable, invalid, or unenforceable, the remainder of these insurance requirements shall not be affected thereby and shall remain valid and fully enforceable.

**24. Losses Paid by Contractor.** Actual losses not covered by insurance as required by this Agreement shall be paid by Contractor. Contractor hereby waives all rights of recovery and releases, and shall cause its Subcontractors to release, Owner from any and all claims or causes of action whatsoever which Contractor and/or Subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by Contractor and/or its subconsultants or Subcontractors pursuant to this Agreement.

**25. Owner a Third-Party Beneficiary.** It is hereby acknowledged and agreed that, based on the Agreement into which this **Exhibit B** is incorporated, Owner is intended to be and hereby is a third-party beneficiary of any agreement(s) between Contractor and any and all Subcontractors and persons who procure, or cause to be procured any insurance policy and any renewals thereof, for the Project.

**26. Required Insurance Coverages No Effect On Indemnification.** The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnifications granted to Owner.

**27. No Warranty That Insurance Limits Will Be Adequate to Fully Protect Contractor.** The insurance requirements set out herein shall not be interpreted as any representation or warranty that the insurance coverage and limits will necessarily be adequate to fully protect Contractor.

## **B. BONDING REQUIREMENTS**

**1. Security/Bid Bond.** Contractor shall provide a Security Bond/Bid Bond on the form provided by Owner as required in the RFP. The surety for a Security Bond shall meet the same requirements as set forth for payment and performance bonds. The Security/Bid Bond will be issued for a period not to exceed six (6) months and will be automatically renewed unless cancelled by written notice to Contractor and Owner, received by Owner within sixty (60) Days prior to the applicable expiration date. If the Bid Bond is cancelled, Contractor shall replace the Bid Bond, or provide other financial security under terms substantially the same as the Bid Bond and otherwise acceptable to Owner, in Owner's sole discretion, within thirty (30) Days of Owner's receipt of the surety's notice of cancellation, failing which, Contractor shall be deemed to be in default of its obligations under and to have committed a material breach of this Agreement and Owner may proceed in accordance with the provisions of the Contract Documents, and/or be entitled to enforce any other remedy or right the Owner may have hereunder.

2. **Performance and Payment Bonds.** Contractor shall provide Performance and Payment Bonds, each with penal sums in the amount of one hundred percent (100%) of the value of the Guaranteed Maximum Price, in accordance with the requirements of § 2253.001 *et seq.*, and in such form attached hereto as **Exhibit B-1**, and **Exhibit B-2**, respectively. The Payment and Performance Bonds will be provided by Contractor upon Owner's execution of the Agreement. No Notice to Proceed shall be issued until the bonds are received and approved by Owner. At all times, Contractor's Performance and Payment Bonds will cover the Guaranteed Maximum Price as set forth in the Agreement. Without limiting any other requirements or obligations of the surety, the Performance Bond shall cover Contractor's warranty obligations for a period not to exceed **two (2)** years from the date of the issuance of the Certificate of Substantial Completion, and shall include coverage for any liquidated damages for which Contractor may be liable under this Agreement.

3. In addition to the above requirements, all bonds shall be issued with the Owner as the named obligee and shall be executed by a corporate surety company authorized to do business in the State of Texas and which shall hold a certificate of authority from the United States Department of Treasury to qualify as a surety on obligations permitted or required under federal law. All bonds shall have a Power of Attorney attached. Performance and Payment bonds shall be provided before any Work is performed.

4. Costs, premiums or other charges for or relating to Subcontractor bonds and/or Subcontractor default insurance are not reimbursable as Costs of the Work or as General Conditions Costs and will not be reimbursed.

**EXHIBIT B-1**  
**FORM OF PERFORMANCE BOND**

**[ATTACHED]**

CONTRACT NO. \_\_\_\_\_

BOND NO. \_\_\_\_\_

STATE OF TEXAS §

§

COUNTY OF TARRANT §

### PERFORMANCE BOND

#### KNOW ALL PERSONS BY THESE PRESENTS:

That we \_\_\_\_\_ as Principal, hereinafter referred to as "Principal" and \_\_\_\_\_, a corporate surety/sureties, duly authorized to do business in the State of Texas, hereinafter referred to as "Surety" (whether one or more), are held and firmly bound unto **Tarrant County Hospital District d/b/a JPS Health Network**, a hospital district and political subdivision of the State of Texas, hereinafter referred to as "**JPS**" in the penal sum of \_\_\_\_\_ (\$ \_\_\_\_\_), lawful money of the United States, to be paid in Fort Worth, Tarrant County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the Principal has entered into a certain contract with JPS, dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, attached hereto and incorporated herein for all purposes as if fully set forth herein, to furnish all materials, equipment labor and other accessories as defined by law, in the prosecution of the work provided for said contract.

**NOW THEREFORE**, the condition of this obligation is such that if the said Principal shall faithfully perform said contract and shall in all respects duly and faithfully observe and perform all and singular the covenants, conditions, and agreements in and by said contract, agreed and covenanted by the Principal to be observed and performed, and according to the true intent and meaning of said contract and the plans and specifications therein referred to, and as well during any period of extension of said contract that may be granted on the part of JPS, as during the original terms of same, then this obligation shall be and become null and void, otherwise to remain in full force and effect.

**PROVIDED FURTHER**, that if any legal action be filed on this Bond, venue shall lie in Tarrant County, Texas.

**AND PROVIDED FURTHER**, that said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work any way affect its obligation on this Bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder.

This bond is executed in compliance with the provisions of Chapter 2253 of the Texas Government Code as amended.

**PERFORMANCE BOND**  
**(Continued)**

**IN WITNESS WHEREOF**, the Principal and the Surety have signed this instrument by duly authorized agents and officers and affixed corporate seals hereto on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Principal: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Surety: \_\_\_\_\_  
(Print First Name and Seal)

By: \_\_\_\_\_

Title: Attorney in Fact

Surety Contact Information where any notice of claim should be sent:

Name: \_\_\_\_\_

Mailing  
Address: \_\_\_\_\_

Physical  
Address: \_\_\_\_\_

Telephone  
Number: \_\_\_\_\_

The address of the Surety to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the following toll-free number: 1-800-252-3439.

**[ATTACH POWER OF ATTORNEY FOR SURETY'S ATTORNEY-IN FACT]**

**EXHIBIT B-2**  
**FORM OF PAYMENT BOND**

**[ATTACHED]**

CONTRACT NO. \_\_\_\_\_

BOND NO. \_\_\_\_\_

STATE OF TEXAS                   §

§

COUNTY OF TARRANT       §

### PAYMENT BOND

#### KNOW ALL PERSONS BY THESE PRESENTS:

That we \_\_\_\_\_ as Principal, hereinafter referred to as "Principal" and \_\_\_\_\_, a corporate surety/sureties, duly authorized to do business in the State of Texas, hereinafter referred to as "Surety" (whether one or more), are held and firmly bound unto **Tarrant County Hospital District d/b/a JPS Health Network**, a hospital district and political subdivision of the State of Texas, hereinafter referred to as "**JPS**" in the penal sum of \_\_\_\_\_ (\$\_\_\_\_\_), lawful money of the United States, to be paid in Fort Worth, Tarrant County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the Principal has entered into a certain contract with JPS, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, attached hereto and incorporated herein for all purposes as if fully set forth herein, to furnish all materials, equipment labor and other accessories as defined by law, in the prosecution of the work provided for in said contract.

**NOW, THEREFORE**, the condition of this obligation is such that if the said Principal, shall pay all sub-contractors, workmen, laborers, mechanics, furnishers of material and claimants (as defined in Chapter 2253 of the Texas Government Code, as amended) supplying labor and material to him or sub-contractor in the prosecution of the work provided for in said contract, all monies to them owing by Principal for sub-contracts, work, labor, and materials furnished for the construction of such improvements for JPS, then this obligation shall be and become null and void, otherwise to remain in full force and effect.

**PROVIDED FURTHER**, that if any legal action be filed on this Bond, venue shall lie in Tarrant County, Texas.

**AND PROVIDED FURTHER**, that said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work performed thereunder, or the plans, specifications, drawings, etc. accompanying same shall in any way affect its obligation on this Bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work to be performed hereunder.

This bond is executed in compliance with the provisions of Chapter 2253 of the Texas Government Code, as amended.

**EXHIBIT B-2-FORM OF PAYMENT BOND**

**PAYMENT BOND  
(Continued)**

**BOND NO.** \_\_\_\_\_

**IN WITNESS WHEREOF**, the Principal and Surety have signed and sealed this instrument by duly authorized agents and officers and affixed corporate seal hereto on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Principal: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Surety: \_\_\_\_\_  
(Print First Name and Seal)

By: \_\_\_\_\_

Title: Attorney in Fact

Surety Contact Information where any notice of claim should be sent:

Name: \_\_\_\_\_

Mailing  
Address: \_\_\_\_\_

Physical  
Address: \_\_\_\_\_

Telephone  
Number: \_\_\_\_\_

The address of the Surety to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the following toll-free number: 1-800-252-3439.

**[ATTACH POWER OF ATTORNEY FOR SURETY'S ATTORNEY-IN FACT]**



## **EXHIBIT C**

### **LIST OF DRAWINGS AND SPECIFICATIONS**

- 1. 2023-012 JPS - Chemistry Analyzer Replacement - 9-29-2023**
- 2. 2559-JPS\_Lab\_Renovation-Electrical**
- 3. 2559-JPS\_Lab\_Renovation-Mechanical**
- 4. 2559-JPS\_Lab\_Renovation-Plumbing**
- 5. Transition Drawing 63912\_JPS\_Fort Worth TX\_AMS08152023**

**EXHIBIT D**  
**CONSTRUCTION SCHEDULE**

**[TO BE ATTACHED]**

**EXHIBIT E**  
**SCHEDULE OF VALUES**

<b>DIVISION</b>	<b>DIVISION DESCRIPTION</b>	<b>COST</b>
CONTRACTOR'S FEE		57,500
BONDING COST		7,851
DEMOLITION		7,000
OWNER ALLOWANCE	Owner Controlled Contingency	\$40,000
ALLOWANCE		
ALLOWANCE		
PERMIT FEES		5,993
01 00 00	General Requirements	158,545
02 00 00	Existing Conditions	
03 00 00	Concrete	
04 00 00	Masonry	
05 00 00	Metals	2,200
06 00 00	Wood, Plastics and Composites	
07 00 00	Thermal and Moisture Protection	1,200
08 00 00	Openings	5,000
09 00 00	Finishes	48,800
10 00 00	Specialties	
11 00 00	Equipment	
12 00 00	Furnishings	
13 00 00	Special Construction	
14 00 00	Conveying Equipment	
21 00 00	Fire Suppression	10,000
22 00 00	Plumbing	29,500
23 00 00	HVAC	207,256
25 00 00	Integrated Automation	75,000
26 00 00	Electrical	99,380
27 00 00	Communications	
28 00 00	Electronic Safety and Security	7,000
31 00 00	Earthwork	
32 00 00	Exterior Improvements	
33 00 00	Utilities	
34 00 00	Transportation	
35 00 00	Waterway and Marine Construction	

40 00 00	Process Integration	
41 00 00	Material Processing & Handling Equipment	
42 00 00	Processing Heating, Cooling, and Drying Equipment	
43 00 00	Process Gas and Liquid Handling, Purification	
44 00 00	Pollution Control Equipment	
45 00 00	Industry-Specific Manufacturing Equipment	
48 00 00	Electrical Power Generation	
<b>Guaranteed Maximum Price:</b>		<b>\$762,225</b>

**EXHIBIT F**  
**CONTRACTOR'S ASSUMPTIONS AND CLARIFICATIONS**

**Not applicable for this contract.**

**EXHIBIT G**  
**OWNER PROVIDED INFORMATION**

Owner shall, with reasonable promptness, provide Contractor a copy of, or reasonable access to, the following information and documentation regarding the Project:

1. Owner's Construction, Renovation and Maintenance Activity Safety Policy dated 06/07/2021.
2. Owner's Rules and Regulations for Construction
3. Owner's HIPAA Policy

## EXHIBIT H

### OWNER'S SPECIAL TERMS AND CONDITIONS

Capitalized terms as used herein such as "Owner", "Contractor", "Subcontractor", "Project", and "Agreement" are used as defined in that certain *Standard Abbreviated Form of Agreement between Owner and Contractor*, AIA Document A104 – 2017, as modified for this Project ("the Agreement"), and shall each have the meanings set forth in the Agreement. Definitions set forth in the Agreement are hereby fully incorporated into this **Exhibit H** as if copied verbatim herein.

#### 1. Confidentiality

1.1 Protection of Confidential Information. Contractor hereby acknowledges, understands and agrees: (i) that in the course of conducting its due diligence regarding the provision of services to Owner, certain Confidential Information will be disclosed to Contractor; and (ii) that whether developed by Owner or others employed by or associated with Owner, all Confidential Information is, and shall remain, the exclusive and confidential property of Owner, and shall be at all times regarded, treated and protected as such by Contractor in accordance with the Agreement. Failure to mark any information "Confidential" shall not affect the confidential nature of such information.

1.2 Confidential Information. Confidential Information includes the information set forth in Section 1.1.8 of the A201-2017 and includes the following:

1.2.1 Work product resulting from, or related to the business and/or operations of Owner, including but not limited to, methods, processes, procedures, analysis, techniques, and audits used by Owner in connection therewith.

1.2.2 Computer software of any type or form in any stage of actual or anticipated research and development, including, but not limited to, programs and program modules, routines and subroutines, processes, algorithms, design concepts, design specifications (design notes, annotations, documentation, flowcharts, coding sheets, and the like), source code, object code and load modules, programming, program patches, and system designs.

1.2.3 Information relating to Owner's proprietary rights prior to any public disclosure thereof, including but not limited to, the nature of the proprietary rights, production data, technical and engineering data, test data and test results, the status and details of research and development of products and services, and information regarding acquiring, protecting, enforcing and licensing proprietary rights (including patents, copyrights, and trade secrets).

1.2.4 Internal personnel and financial information, vendor names and other vendor information (including vendor characteristics, services, and agreements), customer lists and contacts, business plan(s), purchasing and internal cost information, internal services and operational manuals, pricing, marketing, and all other manner and methods of conducting Owner's business.

1.2.5 Marketing and development plans, price and cost data, price and fee amounts, pricing and billing policies, quoting procedures, marketing techniques and

methods of obtaining business, forecasts and forecast assumptions and volumes, and future plans and potential strategies of Owner which have been or are being discussed.

1.3 Covenants. As a consequence of Contractor's acquisition or anticipated acquisition of Confidential Information, Contractor will occupy a position of trust and confidence to Owner with respect to Owner's affairs and business. In view of the foregoing and of the mutual consideration to be provided to each party, Contractor agrees that it is reasonable and necessary that it make the following covenants:

1.3.1 Both during and forever after the performance of any due diligence investigation, Contractor will not disclose Confidential Information to any person or entity other than as necessary in carrying out its duties on behalf of Owner and/or due diligence investigation, without first obtaining Owner's prior, written consent, and Contractor will take all reasonable precautions to prevent inadvertent disclosure of such Confidential Information. This prohibition against Contractor's disclosure of Confidential Information includes, but is not limited to, disclosing the fact that any similarity exists between the Confidential Information and information independently developed by another person or entity, and Contractor understands that such similarity does not excuse Contractor from abiding by its covenant or other obligations pursuant to the Agreement.

1.3.2 Both during and after the conduct of its due diligence investigation, Contractor will not use, copy, or transfer Confidential Information other than as necessary in carrying out its duties on behalf of Owner and/or due diligence investigation, without first obtaining prior written consent of Owner, and will take all reasonable precautions to prevent inadvertent use, copying, or transfer of such Confidential Information. This prohibition against Contractor's use, copying, or transfer of Confidential Information includes, but is not limited to, selling, licensing, or otherwise exploiting, directly or indirectly, any products or services, including software in any form, that embody or are derived from Confidential Information.

1.4 Use. Contractor agrees not to make any written use of or reference to Owner's name or registered or unregistered trademarks (or any names under which Owner conducts business or operations) for any marketing, public relations, advertising, display or other business purpose or make any use of Owner's facilities for any activity related to the express business purposes and interests of Owner pursuant to the Agreement, without the prior written consent of Owner, which consent may be withheld or granted in Owner's sole and absolute discretion. Contractor agrees not to utilize, either directly or indirectly, any Confidential Information in order to facilitate or create direct business relationships with business customers of Owner.

1.5 Open Records Request or Similar Requests for Information. In the event that Contractor receives a request to disclose all or any part of the Confidential Information under the terms of the Texas Public Information Act, a subpoena or other order issued by a court of competent jurisdiction or by another governmental agency, Contractor shall: (i) notify Owner of the existence, terms, and circumstances surrounding such a request within one (1) business day of the receipt of the request; (ii) notify the entity requesting the information that such a request for information should be submitted to Owner, not Contractor; (iii) provide the entity requesting the information the contact information of Owner's public information coordinator; and (iv) forward all responsive information to Owner within two (2) business days of the receipt of the request.

1.6 Confidentiality Provisions Applicable to Owner. Subject to the provisions of Section 1.7 below, Owner shall keep confidential all information, in whatever form, produced,



prepared, or observed by Contractor to the extent that such information is stamped "Confidential Information" or otherwise determined to be confidential by Applicable Laws.

1.7 Public Records. Notwithstanding any provisions of the Agreement to the contrary, Contractor understands that Owner will comply with the Texas Public Information Act, Tex. Gov't. Code Ch. 552. If contacted by Owner, Contractor will cooperate with Owner in the production of documents responsive to the request. Contractor agrees to provide the documents responsive to the request in the format and within the time frame specified by Owner. Contractor may request that Owner seek an opinion from the Office of the Attorney General of Texas. However, the final decision whether to seek a ruling from the Office of the Attorney General of Texas will be made by Owner in its sole discretion to comply with the legal requirements of the Texas Public Information Act. Additionally, Contractor will notify Owner's general counsel within twenty-four (24) hours of receipt of any third-party requests for information written, produced, collected, assembled, or maintained in connection with the Agreement and/or any amendment to the Agreement. The Agreement and/or any amendment to the Agreement and all data and other information generated or otherwise obtained in its performance is subject to the Texas Public Information Act. Contractor agrees to maintain the confidentiality of information received from Owner during the performance of the Agreement, including information which discloses confidential personal information particularly, but not limited to, social security numbers. Furthermore, Contractor is required to make any information created or exchanged with the State pursuant to the Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public as specified by Owner at no additional charge to the Owner.

**2. Suspension and Debarment.** Contractor, on behalf of itself and its employees, agents, representatives, and Subcontractors, represents that as of the date of, and at all times during the term of, the Agreement, the following shall be true, complete, and correct:

2.1 Contractor is in compliance or will comply with, to the extent applicable, Owner's compliance program and all applicable federal and state laws and regulations therein, including, but not limited to, federal and state healthcare fraud and abuse provisions;

2.2 Contractor is not a target or subject of a federal or state criminal, civil, or administrative investigation;

2.3 Contractor is not a party to any actual or threatened criminal, civil, or administrative action or proceeding concerning a potential violation of federal or state laws including, but not limited to, federal or state healthcare fraud and abuse provisions;

2.4 Contractor has not been convicted of any crime relating to any federal and/or state program; and

2.5 Contractor is not, and has not previously been, excluded, debarred, suspended, or otherwise deemed ineligible from participating in any federal or state healthcare program or other federal or state program.

2.6 During the term of the Agreement, Contractor shall immediately give Owner written notice if Contractor is not in compliance with any provision of this Section 2. Upon the occurrence of such event, whether or not notice is given to Owner, Owner may terminate the Agreement effective immediately upon written notice to Contractor.

**3. Historically Underutilized Businesses.** Contractor will proactively comply with Owner's established policies regarding the utilization of S/W/MBE/HUB entities and goals, and all other applicable administrative rules and statutes relating to utilization of S/W/MBE/HUB entities for the Project.

**4. Equal Opportunity.** Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief. Such action shall include, but not be limited to, the following: (i) employment, upgrading, demotion, or transfer; (ii) recruitment or recruitment advertising; (iii) layoff or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training, including apprenticeship. Contractor shall post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination Section. Contractor shall include this Section in all subcontract agreements pertaining to the services to be provided under the Agreement.

**5. Nondiscrimination.** In their execution of the Agreement, the parties and others acting by or through them shall comply with all federal and state laws prohibiting discrimination, harassment, and sexual misconduct. To the extent not in conflict with federal or state law, the parties agree not to discriminate on the basis of race, color, national origin, age, sex, religion, disability, veterans' status, sexual orientation, gender identity or gender expression. Any breach of this covenant may result in termination of the Agreement.

**6. Immigration Reform.** The Immigration Reform and Control Act of 1986, as amended, the Immigration Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, require that all employees hired since 1986 provide proof of identity and employment eligibility before they can work in the United States. Owner is committed to complying with all applicable immigration laws of the United States and requires compliance by all contractors, subcontractors, and consultants who contract with the Owner. Contractor shall not place any employee of Contractor at a worksite, nor shall Contractor permit any employee, nor any Subcontractor, to perform any work on behalf of, or for the benefit of, Owner without first confirming said employee's authorization to lawfully work in the United States. Contractor states that Contractor: (i) maintains and follows an established policy to verify the employment authorization of its employees and to ensure continued compliance for the duration of employment; (ii) has verified the identity and employment eligibility of all employees in compliance with Applicable Law; (iii) has established internal safeguards and reporting policies to encourage its employees to report any suspected violations of immigration policies or of immigration law promptly to Contractor's senior management; and (iv) is without knowledge of any fact that would render any employee or any Subcontractor ineligible to legally work in the United States. Contractor further acknowledges, agrees, and states that it: (i) has complied, and shall at all times during the term of the Agreement comply, in all respects with the Immigration Reform and Control Act of 1986 and 1990, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and all of the laws, rules, and regulations relating thereto; (ii) has properly maintained, and shall at all times during the term of the Agreement properly maintain, all records required by the Department of Homeland Security, Immigration and Customs Enforcement, including, without limitation, the completion and maintenance of the Form I-9 for each of Contractor's employees; and (iii) has responded, and shall at all times during the term of the Agreement respond, in a timely fashion to any inspection requests related to such I-9 Forms. During the term of the Agreement, Contractor shall, and shall cause its directors, officers, managers, agents and employees to, fully cooperate in all respects with any audit, inquiry, inspection or investigation that may be conducted by Owner or any state or county agency of Contractor or any of its employees. Contractor acknowledges, agrees, and represents that all Subcontractors permitted by it to perform Work and/or services hereunder will be required to agree to these same terms as a condition to being awarded a contract for the performance of such services.

7. **E-Verify.** By entering into the Agreement, Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of the Agreement, the U.S. Department of Homeland Security's E-Verify system, in accordance with the U.S. Department of Homeland Security's rules, to determine the eligibility of: (i) all persons employed to perform duties within the State of Texas, during the term of the Agreement; and (ii) all persons (including all Consultants Subcontractors) assigned by the Contractor to perform services pursuant to the Agreement, within the United States of America. Contractor shall provide, upon request of Owner and if available, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the Contractor and Subcontractors, as proof that this provision is being followed. If this certification is falsely made, the Agreement may be immediately terminated, at the discretion of Owner, and at no fault to Owner, with no prior notification. Contractor shall also be responsible for the costs of any re-solicitation that Owner must undertake to replace the terminated Agreement. For persons not eligible for E-Verify screening, Contractor (along with all Subcontractors) shall provide, upon request by Owner, another form of documentation of proof of eligibility to work in the United States of America.

8. **Entities that Boycott Israel.** Pursuant to *Tex. Gov't. Code §2271.002*, Contractor certifies that either (i) it meets an exemption criteria under *Tex. Gov't. Code §2271.002*; or (ii) it does not boycott Israel and will not boycott Israel during the term of the Agreement. Contractor shall state any facts that make it exempt from the boycott.

9. **Entities that Boycott Energy Companies.** In compliance with *Tex. Gov't Code § 2276.002*, Contractor verifies that neither it nor any of its affiliates currently boycott energy companies and neither it nor any of its affiliates will boycott energy companies during the term of this [Agreement]. "Boycott energy company" is defined in Section 809.001(1) of the Texas Government Code.

10. **Entities that Discriminate against Firearms Entities or Trade Associations.** Pursuant to *Tex. Gov't. Code §2274.002*, Contractor certifies that either (i) it meets an exemption criteria under *Tex. Gov't. Code §2274.002*, or (ii) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association (as defined under *Tex. Gov't Code §2274.001*) and will not discriminate during the term of the Agreement against a firearm entity or firearm trade association. Contractor shall state any facts that make it exempt from verification.

11. **Scrutinized Business Operations Prohibited.** In compliance with *Tex. Gov't. Code § 2252.151 et seq.*, Contractor warrants and represents that: (1) neither Contractor nor any of its affiliates engages in scrutinized business operations in Sudan; (2) neither Contractor nor any of its affiliates engages in scrutinized business operations in Iran; and (3) neither Contractor nor any of its affiliates engages in scrutinized business operations with designated foreign terrorist organizations. "Scrutinized business operations in Sudan" is defined in *Tex. Gov't. Code § 2270.0052*. "Scrutinized business operations in Iran" is defined in *Tex. Gov't. Code § 2270.0102*. "Scrutinized business operations with designated foreign terrorist organizations" is defined in *Sect Tex. Gov't. Code § 2270.0152*. Contractor further represents and warrants that neither Contractor nor any of its affiliates appears on any of the Texas Comptroller's Scrutinized Companies Lists.

12. **Excluded Parties.** Contractor certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

13. **No Conflicts.** Contractor represents that Contractor has no actual or potential conflicts of interest in providing services to Owner under the Agreement and that Contractor's provision of services under the Agreement would not reasonably create an appearance of impropriety.

**14. Deceptive Trade Practices Act; Unfair Business Practices Disclosures.** Contractor represents and states that it has not been found liable of Deceptive Trade Practices Act violations under *Tex. Bus. & Com. Code Ch. 17* or of any unfair business practice in any administrative hearing or court suit. Contractor further certifies that it has no officers who have served as officers of other entities who have been found liable of Deceptive Trade Practices violations or of any unfair business practices in an administrative hearing or court suit. In the event that allegations of Deceptive Trade Practices violations under *Tex. Bus. & Com. Code Ch. 17* or of any unfair business practices against either Contractor or any of Contractor's officers have occurred or are currently pending in an administrative proceeding or in a lawsuit filed with any court, then Contractor has disclosed all such matters to Owner and provided a brief description of each allegation, information regarding the administrative body or court before which the matter is pending, and the current status of the matter.

**15. Disclosure of Interested Parties.** Contractor certifies that, if the value of the Agreement or the anticipated value of the Agreement exceeds One Million Dollars (\$1,000,000), it has complied with *Tex. Gov't. Code §2252.908* and *1 Tex. Admin. Code §§46.1* through *§46.3* as implemented by the Texas Ethics Commission (TEC), if applicable, and has provided the Owner with a fully executed TEC Form 1295, certified by the TEC and signed and notarized by the Contractor.

**16. General and Criminal Background Checks**

16.1 Contractor represents that Contractor and Contractor's employees have not been convicted of a felony criminal offense, or of a crime involving moral turpitude, or that, if such a conviction has occurred, Contractor has fully advised Owner as to the facts and circumstances surrounding the conviction.

16.2 Contractor, and all of Contractor's employees, and Subcontractors that will perform any work or services on-Site at a county-owned property shall be subject to a criminal background check. Any expense associated with such criminal background check shall be borne by Contractor.

16.3 All criminal background check forms for the Contractor, and all of Contractor's employees, and Subcontractors that will initially commence any work on-Site must be fully completed and submitted to Owner within **fifteen (15)** Days of the date of the appropriate notice of award, and the process thereafter must be diligently pursued by Contractor. All criminal background checks must be completed before the Contractor, or any employee, or Subcontractor performs any services at the Site.

16.4 All criminal background checks must be accomplished by the Texas Department of Public Safety (the "DPS"), which includes fingerprint processing by an independent third-party company selected by DPS. Upon receipt of the fingerprints of the Contractor, and Contractor's employees, and/or Subcontractors, DPS, or Owner, will adjudicate the results of the criminal background searches in accordance with Owner's background check requirements and guidelines. The failure to timely secure criminal background check clearance shall not be considered a legitimate delay in the performance of the services hereunder.

**17. Use of Owner Property.** Contractor is prohibited from using Owner Property for any purpose other than performing services authorized under the Agreement. "Owner Property" includes, but is not limited to: Owner's office space, identification badges, Owner information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any Owner issued software, the Owner's Virtual Private Network (VPN client)) information, and any other resources of Owner. Contractor shall not remove Owner Property from the Owner's campus. Contractor

may not use any computing device to access Owner's network or e-mail. Contractor shall not perform any maintenance services on Owner's Property unless the Agreement expressly authorizes such services. During the time that Owner Property is in the possession of Contractor, Contractor shall be responsible for (i) all repair and replacement charges incurred by Owner that are associated with loss of Owner Property or damage beyond normal wear and tear; and (ii) all charges attributable to Contractor's use of Owner Property that exceeds the scope of the Agreement. Contractor shall fully reimburse such charges to Owner within **ten (10)** Days of Contractor's receipt of Owner's notice of amount due. Use of Owner Property for a purpose not authorized by the Agreement shall constitute breach of the Agreement and may result in termination of the Agreement and the pursuit of other remedies available to Owner under contract, at law, or in equity.

**18. Drug-Free Work Place.** Contractor, Contractor's employees, and Subcontractors shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law No. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and Contractor, Contractor's employees, and Subcontractors shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

**19. No Smoking.** All facilities where Work is to be performed or services rendered are nonsmoking buildings. Contractor, d Subcontractors, and all of their employees are prohibited from smoking in all areas except in areas designated for smoking.

**20. Signage.** Neither Contractor nor or Subcontractors shall display or distribute any advertising signs or notices of any kind whatsoever upon Owner's premises without the prior written permission of Owner.